128-586

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~357.~~ 90

ELIAB W. METCALF, PLAINTIFF IN ERROR,

vs.

THE CITY OF WATERTOWN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED OCTOBER 9, 1885.

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INDEX.

	Original.	Print.
Writ of error	1	1
Return on writ	2	1
Caption	3	1
Præcipe for summons	3	2
Bond for costs	4	2
Summons	5	3
Marshal's return	6	3
Notice of appearance of defendant	7	4
Complaint	8	4
Answer	11	6
Replication	14	8
Affidavit and notice of motion to strike out reply	18	9
Stipulation waiving jury	21	11
Order striking out replication	22	11
Decision	23	12
Order overruling motion for new trial	23	12
Findings of facts	24	13
Conclusions of law	27	14
Exceptions to conclusions of law	28	14
Judgment	29	15
Substitution of attorney	32	16
Order of substitution	33	17
Bond	33	17
Citation	35	18
Proof of service of citation	36	19
Clerk's certificate	38	19
Assignment of errors	39	20

JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 29, 1887.

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Writ of error	1	1
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Præcipe for summons	3	2
Bond for costs	4	2
Summons	5	3
Marshal's return	6	3
Notice of appearance of defendant	7	4
Complaint	8	4
Answer	11	6
Replication	14	8
Affidavit and notice of motion to strike out reply	18	9
Stipulation waiving jury	21	11
Order striking out replication	22	11
Decision	23	12
Order overruling motion for new trial	23	12
Findings of facts	24	13
Conclusions of law	27	14
Exceptions to conclusions of law	28	14
Judgment	29	15
Substitution of attorney	32	16
Order of substitution	33	17
Bond	33	17
Citation	35	18
Proof of service of citation	36	19
Clerk's certificate	38	19
Assignment of errors	39	20

JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 29, 1887.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Wisconsin, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between Eliab W. Metcalf, plaintiff, and the City of Watertown, defendant, a manifest error hath happened, to the great damage of the said Eliab W. Metcalf, plaintiff, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this seventh day of August, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. M. STEWART,
Clerk of the Circuit Court of the United States for the Western District of Wisconsin.

Allowed by—
——— ———.

2 [Endorsed:] Eliab W. Metcalf *vs.* The City of Watertown. Writ of error.

The return of the within writ appears by the transcript & citation hereto annexed.

The return of the judges *of the judges* of the circuit court of the United States for the western district of Wisconsin.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court, at my office in the city of Madison, this 10th day of September, A. D. 1885, and of our Independence the one hundred and tenth.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. M. STEWART, *Clerk.*

3 UNITED STATES OF AMERICA, *ss:*

At a special term of the circuit court of the United States of America for the western district of Wisconsin, begun and held at the city

of Madison, in said district, on the first Tuesday (being the 2d day) of December, A. D. 1884—present and presiding, the Hon. Romanzo Bunn, district judge—among other, the following proceedings were had, to wit:

ELIAB W. METCALF, Plaintiff,

vs.

THE CITY OF WATERTOWN, Defendant.

Be it remembered that heretofore, to wit, on the 29th day of June, A. D. 1883, came the above-named plaintiff, by his attorney, A. A. R. Butler, and filed his *præcipe* for a summons as follows, to wit:

Præcipe.

United States Circuit Court, Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,

vs.

THE CITY OF WATERTOWN, Defendant.

F. M. Stewart, clerk:

4 SIR: Issue summons in above-entitled action, according to law; complaint not served.

June 29, 1883.

Yours, &c., A. R. R. BUTLER,
Plaintiff's Attorney.

And at the same time said plaintiff filed bond for costs as follows, viz:

Bond for Costs.

Know all men by these presents that I, E. E. Chapin, of the city and county of Milwaukee, Wisconsin, am held and firmly bound unto the City of Watertown in the sum of two hundred dollars, to be paid to the said City of Watertown, its successors or assigns; to which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals the 25th day of June, A. D. 1883.

Whereas an action in the circuit court of the United States, western district of Wisconsin, is about to be commenced at the suit of Eliab W. Metcalf, plaintiff, and The City of Watertown, defendant:

Now, therefore, the condition of this obligation is such that if the plaintiff will pay all costs that may be awarded against him not exceeding the aforesaid sum, then this obligation to be void; else valid.

E. E. CHAPIN. [SEAL.]

Witness:

J. E. FRIEND.

5 ARTHUR SPANGENBERG.

EASTERN DISTRICT OF WISCONSIN, *ss:*

E. E. Chapin, being sworn, says that he is worth the sum of five hundred dollars, exclusive of property exempt from execution and his debts.

E. E. CHAPIN.

Subscribed and sworn to before me this 25th day of June, A. D. 1883.

[SEAL.] J. E. FRIEND,
Notary Public.

Whereupon a summons issued as follows, to wit:

Summons.

Circuit Court of the United States for the Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,
vs.
THE CITY OF WATERTOWN, Defendant.

The President of the United States of America to the said defendant:

You are hereby summoned to appear within twenty days after the service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid, and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint, which will be filed in the office of the clerk of this court at Madison, Wis.; and you are also required to file your answer in said action in the office of the clerk of this court, at the city of Madison, within the time above specified.

6

The marshal of said district is hereby commanded to serve this summons and make due return thereto.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Madison, in the said western district of Wisconsin, this 29th day of June, A. D. 1883, and of the Independence of the United States the one hundred and seventh.

[SEAL.] F. M. STEWART, *Clerk.*

A. R. R. BUTLER,
Plaintiff's Attorney.

P. O. address, Milwaukee, Wis.

The service of said summons appears by the endorsement of the marshal thereon as follows, viz.:

Service.

Served on the within-named The City of Watertown by delivering a copy of the within summons to Henry Beiber, city clerk, and

also a copy thereof to Charles H. Gardner, city attorney, and also a copy thereof to Fred. Kusel, the last-elected chairman of the board of street commissioners of said city, this 2d day of July, 1883, the office of mayor of said city being vacant and there being no
7 president of the common council or presiding officer thereof in office.

F. W. OAKLEY, *Marshal*,
By W. S. MAIN, *Deputy*.

Fees:

Service	$6 00
Copies	60
Travel	2 40
	$9 00

And afterwards, to wit, on the 24th day of July, A. D. 1883, came the said defendant, by its attorneys, Geo. W. Bird and Daniel Hall, and filed notice of appearance as follows, viz:

Circuit Court of the United States.

ELIAB W. METCALF, Plaintiff,
against
THE CITY OF WATERTOWN, Defendant.

Please take notice that we are retained by and appear for the defendant, The City of Watertown, in the above-entitled action, and we demand that a copy of the plaintiff's complaint therein be served upon us at the office of Hall & Skinner, in the 4th ward of the city of Watertown, Jefferson Co., Wisconsin.

Dated Watertown, Wis., July 14, 1883.

Yours, &c.,
GEO. W. BIRD AND
DANIEL HALL,
Attorneys for Defendant.

P. O. address: Watertown, Wis.

To A. R. R. Butler, Esq., attorney for plaintiff.

8 And thereafter, to wit, on the 9th day of August, 1883, came said plaintiff and filed his complaint as follows:

Complaint.

United States Circuit Court, Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,
against
THE CITY OF WATERTOWN, Defendant.

The plaintiff above named, who is a citizen of the State of Ohio, by A. R. R. Butler, his attorney, complaining of the defendant, a municipal corporation duly chartered, organized, and existing within and under and by virtue of the laws of the State of Wisconsin,

alleges that at a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held, according to law, at the city of Milwaukee, on the second Monday (being the 9th day) of April, A. D. 1866—present and presiding, the Honorable Andrew G. Miller, judge—on the twenty-fourth day of said term, to wit, on the 8th day of May, A. D. 1866, one Pitkin C. Wright, then plaintiff, recovered a judgment which was duly given by said last above-mentioned court against the defendant above named

9 for ten thousand one hundred and fifty dollars and forty-six cents damages, together with the sum of fifty-seven dollars and forty cents costs and disbursements, amounting in all to the sum of ten thousand two hundred and seven dollars and eighty-six cents, in an action at law wherein the said Pitkin C. Wright was plaintiff and the defendant herein was the defendant.

That thereafter, to wit, on or about the 24th day of April, 1872, the said Pitkin C. Wright, for a valuable consideration, duly assigned twenty-five sixty-oneths ($\frac{25}{61}$) of the whole of said judgment, so as aforesaid obtained against said defendant, to one Fanny Beach Ely; and thereafter, to wit, on or about the 24th day of August, 1872, the said Pitkin C. Wright, for a valuable consideration, duly assigned fifteen sixty-oneths ($\frac{15}{61}$) of the said judgemnt to Samuel S. Beach; and thereafter, to wit, on or about the 8th day of August, 1873, the said Pitkin C. Wright, for a valuable consideration, duly assigned the remaining portion of said judgment to the said Fanny B. Ely and the said Samuel S. Beach; and that thereafter, to wit, on or about the 30th day of August, 1873, the above-named Fanny B. Ely and Samuel S. Beach, then being the owners of the whole of said judgment, for a valuable consideration, duly assigned said judgment and the whole thereof to this plaintiff; that on or about the 8th day of September, 1873, the said assignments were duly filed in the office of the clerk of said court and record thereof made.

That this plaintiff, Eliab W. Metcalf, is now the lawful owner of said judgment and of the whole thereof, and that no part thereof has been paid.

10 That said judgment has not been appealed from, reversed, nor satisfied.

Wherefore the plaintiff, Eliab W. Metcalf, demands judgment against the defendant for the sum of ten thousand two hundred and seven dollars and eighty-six cents, together with the interest thereon from the 8th day of May, 1866, together with the costs and disbursements of this action.

A. R. R. BUTLER,
Pl'ff's Attorney.

STATE AND EASTERN DISTRICT OF WISCONSIN, *ss:*

Chas. C. Dey, being first duly sworn, says that he is the agent of and acting attorney for the plaintiff in the above-entitled action in the absence of A. R. R. Butler, Esq., plaintiff's attorney herein, who is now in Europe, and that he makes this affidavit of verification for and on behalf of said plaintiff herein for the reason that said plain-

tiff is a non-resident and is not within the State of Wisconsin, where deponent resides, and because all the material allegations of said complaint are within the personal knowledge of deponent, as such agent of the plaintiff herein; that he has read the foregoing complaint and knows the contents thereof, and that he believes it to be true. Deponent further says that the sources of his information and the grounds of his belief are derived from a personal examination and inspection of the judgment roll and all papers connected therewith, upon which said judgment this action is brought,
and from an inspection and examination of the several as-
11 signments of said judgment as set forth in said complaint;
all of which are matters of record and on file in the office of the clerk of the circuit court of the United States, at the city of Milwaukee, Wisconsin, and also from conversations and correspondence deponent has had with plaintiff regarding the matters and things therein set forth.

CHAS. C. DEY.

Subscribed and sworn to before me this 6th day of August, A. D. 1883.

[SEAL.] E. E. CHAPIN,
Notary Public, Milwaukee Co., Wis.

Endorsed: Service of the within admitted by copy this 7th day of August, 1883. Daniel Hall, Geo. W. Bird, att'ys for def't.

And afterwards, to wit, on the 20th day of August, 1883, came defendant and filed its answer as follows, viz:

Answer.

United States Circuit Court, Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,
vs.
THE CITY OF WATERTOWN, Defendant.

12 The answer of The City of Watertown, the above-named defendant, to the plaintiff's complaint in the above-entitled action, by Geo. W. Bird and Daniel Hall, its attorneys, respectfully shows unto this hon. court—

First. That, answering said complaint and as a defense thereto and to the whole thereof, this the said defendant, denies that it has sufficient knowledge or information to form a belief as to whether Pitkin C. Wright, named in said complaint, on or about the 24th day of April, 1872, or at any other time, for a valuable consideration or otherwise, assigned twenty-five sixty-oneths ($\frac{25}{61}$) of the judgment described in said complaint to said Fanny Beach Ely, or as to whether, on or about the 24th day of August, 1872, or at any other time, the said Pitkin C. Wright, for a valuable consideration or otherwise, assigned fifteen sixty-oneths ($\frac{15}{61}$) of said judgment to said Samuel S. Beach, or as to whether, on or about the 8th day of Au-

gust, 1873, or at any other time, the said Pitkin C. Wright, for a valuable consideration or otherwise, assigned the remaining portion of said judgment to the said Fanny B. Ely and Samuel S. Beach, or as to whether thereafter, on or about the 8th day of September, 1873, or at any other time, the said Fanny B. Ely and Samuel S. Beach, for a valuable consideration or otherwise, assigned the said judgment or any part thereof to the said plaintiff, or as to whether the said alleged assignments were or any or either of them was, on or about the 8th day of September, 1873, or at any other time,
13 filed in the office of the clerk of the court wherein said judgment was recorded, or as to whether the said Fanny Beach Ely and Samuel S. Beach ever were or either of them ever was the owner of the said judgment or any part thereof, or as to whether said plaintiff was or ever has been the owner of the said judgment or any part thereof, and said defendant denies that any record has ever been made of said alleged assignments or any or either of them in said last-mentioned court or elsewhere.

Second. For a second and further defense to said action and to the whole cause of action stated in said complaint the said defendant further alleges that the said cause of action stated in said complaint did not accrue within ten years next before the commencement of this action and did not accrue within ten years next before the 1st day of November, 1878; that this action was not commenced within the ten years limited by law for the commencement thereof after the same accrued, and that on and at the end of the 8th day of May, 1876, the said action became and was and ever since has been barred by the statute of limitations of the State of Wisconsin.

Wherefore the defendant demands the judgment of the court dismissing said complaint and for its costs herein.

DANIEL HALL,
GEO. W. BIRD,
Def't's Att'ys.

WESTERN DISTRICT OF WISCONSIN, *ss:*

14 Henry Bieber, being first duly sworn, doth depose and say that he has heard read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on his information and belief, and as to those matters he believes it to be true; deponent further says that the reason why this verification is not made by the defendant is that the defendant is a corporation, and that this defendant is an officer thereof, to wit, that he is the city clerk of said defendant city, and that his knowledge is derived from the laws of Wisconsin and documents in his possession as such city clerk, and that the grounds of his belief are such laws and documents and information communicated to him by the officers and agents of the said corporation.

HENRY BIEBER.

Subscribed and sworn to before me this 18th day of August, 1883.

C. B. SKINNER,
U. S. Court Commissioner for Western Dist. Wis.

And afterwards, to wit, on the 11th day of December, 1883, came said plaintiff, by his attorney, and filed his replication herein as follows:

Replication.

United States Circuit Court, Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,

vs.

THE CITY OF WATERTOWN, Defendant.

And now comes the above-named plaintiff, by A. R. R. Butler, his attorney, and, for reply to the second defense pleaded and set forth in the answer of the above-named defendant to the complaint of the plaintiff herein, respectfully shows to this honorable court:

That, as plaintiff is informed and verily believes and upon information and belief alleges, the said defendant, The City of Watertown, and its officers, agents, citizens and residents of said city, did, in the year 1873, conspire together and with each other, and ever since have conspired together and with each other, for the purpose and with the preconceived design and intent to defraud this plaintiff as a judgment creditor of said city upon his judgment (sued on herein), which was duly rendered upon bonds issued by said city and other like judgment creditors of said city and other creditors of said city owning and holding bonds and coupons to such bonds, whether theretofore in judgment or otherwise, from obtaining service of process on said city.

And plaintiff further shows that, as he is informed and verily believes, in the year 1873 and every year thereafter a mayor of said city was elected as required by law, but that said mayor each year, with the intent and design as aforesaid, qualified as herein-
16 after mentioned and immediately thereafter placed his resignation in the hands of the city clerk of said city, to be filed by him in case of emergency and to take effect accordingly.

And plaintiff further alleges that, as he is informed and verily believes, each year since prior to the month of August, 1873, after the mayor and members of the common council of said defendant city had been elected, they and each of them failed to qualify until they had assembled in a secret place with locked doors, unknown to the people at large and to this plaintiff, with persons on watch to inform them of the approach of any person or persons, and then and there, if unmolested, the mayor and members of the common council, qualified as required by law, transacted certain necessary business for said defendant city, and thereafter immediately filed with the city clerk of said city their respective resignations, to take effect immediately, and which resignations went immediately into effect.

And plaintiff further alleges that since he became the sole and absolute owner of the judgment against said defendant sued on herein, to wit, the 30th day of August, 1873, he has consulted several attorneys for the purpose of collecting said judgment or renewing the same by an action against said defendant thereon within

ten years from the date of said judgment, and thereafter and to that end plaintiff personally endeavored to ascertain who was the mayor or acting mayor or chairman of the common council or chair-
17 man of the board of street commissioners for the purpose of having process served on said city, but owing to said conspiracy, as this plaintiff is informed and believes, there has been no mayor of said city since the said 30th day of August, 1873, except for a few hours at such secret and concealed meeting.

And the common council of said city, with the said fraudulent intent and design, has failed each year to elect a chairman of said common council, and since said last-mentioned date there has been no person who was acting mayor and no chairman of the board of street commissioners, except as stated.

Said plaintiff further alleges that, notwithstanding he has used due diligence and has consulted an attorney for the purpose of having process served on said city, he has been unable to have summons duly served on said city by reason of the premises, and to prosecute an action upon his said judgment until the defendant, by its attorneys, appeared herein.

A. R. R. BUTLER,
Plaintiff's Attorney.

STATE AND EASTERN DISTRICT OF WISCONSIN, *ss:*

A. R. R. Butler, being first duly sworn, says that he is the attorney for the plaintiff herein, and makes this verification for and on his behalf, and because the said plaintiff is not a resident of this State or now within said State; that he has heard read the above and foregoing reply and knows the contents thereof, and that he verily believes the same to be true: that the sources of depo-
18 nent's information and the grounds of his belief consist of information acquired by him as the attorney of the plaintiff from citizens of said city of Watertown, from attorneys who represented similar claims against said city, and from creditors of said city.

A. R. R. BUTLER.

Subscribed and sworn to before me this 6th day of December, A. D. 1883.

[SEAL.] J. E. FRIEND,
Notary Public, Milwaukee County, Wisconsin.

Endorsed: Service of within reply by copy thereof was made on us this 8th day of December, 1883, which copy we at once on said day returned to A. R. R. Butler, Esq., plaintiff's attorney, on the ground thereon endorsed that said reply was improper and that the plaintiff had no right to make or interpose the same in the within-entitled action. Geo. W. Bird & D. Hall, d'f't's att'ys.

And thereafter, to wit, on the second day of December, A. D. 1884, came said defendants and filed notice of motion and affidavit to strike out reply of plaintiff, as follows:

Affidavit and Notice of Motion to Strike out Reply.

WESTERN DISTRICT OF WISCONSIN, *ss:*

Circuit Court of the United States for the Western District of Wisconsin.

19 ELIAB W. METCALF, Plaintiff,

vs.

THE CITY OF WATERTOWN, Defendant.

Daniel Hall, being duly affirmed, deposes and says that he is one of the attorneys for the defendant in the above-entitled action; that on the 8th day of December, 1883, the said plaintiff's attorney served on the defendant's attorneys herein the reply to the defendant's answer now on file in said action, by sending them a copy thereof by mail; that on the same day of such service this affiant, as such attorney of said defendant, duly returned by mail to A. R. R. Butler, the plaintiff's attorney herein, the said copy of said reply, with the endorsement thereon, in the following words, to wit:

To A. R. R. Butler, Esq., pl'ff's att'y:

Please take notice that we return this copy — reply and decline to accept or retain the same, on the ground that said reply is improper and that the plaintiff has no right to make or interpose the same in the within-entitled action.

Yours, &c.,

GEO. W. BIRD AND D. HALL,
Def't's Att'ys.

That on said 8th day of December, 1883, this affiant, at the city of Watertown, in said district, where he then resided, deposited and left to be carried the said copy so endorsed, properly enclosed in a post-paid wrapper, in the post office there, and addressed to
20 said A. R. R. Butler, at his proper post-office address at the city of Milwaukee, in the State of Wisconsin, without any direction to the postal officers for the return thereof, between which cities of Milwaukee and Watertown there is and then was regular communication by mail, and that none of said defendant's attorneys herein resided in the same place where said plaintiff's attorney herein then resided, and that since said 8th day of December, 1883, as this affiant is informed and believes, the said reply has been and now is filed with the clerk of said court in said action.

DANIEL HALL.

Subscribed and affirmed to before me this 21st day of November, A. D. 1884.

C. B. SKINNER,
U. S. Court Commissioner for Western Dist. of Wis.

Notice.

Circuit Court of the United States for the Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,
vs.
THE CITY OF WATERTOWN, Defendant.

To A. R. R. Butler, Esq., plaintiff's attorney:

SIR: Please to take notice that upon the attached affidavit and upon the complaint, answer, and reply served and filed herein we shall apply to said court, at the United States court-room, at
21 the city of Madison, Dane county, Wisconsin, on the 2d day of December, A. D. 1884, at the opening of court on that day, or as soon thereafter as counsel can be heard, to strike out and off from the files of this court the plaintiff's said reply to the defendant's answer herein for the reason that said reply is not authorized by law, inasmuch as the said answer does not contain a counter-claim, and for the further reason that the said reply is frivolous.

Dated November 21st, 1884.

Yours, &c,

GEO. W. BIRD AND
D. HALL,
Def't's Att'ys.

Endorsed: Due personal service of defendant's notice of this date of its motion to strike out plaintiff's reply to the defendant's answer herein, with affidavit of D. Hall thereto annexed, admitted this 22d day of November, 1884. A. R. R. Butler, pl'ff's att'y.

And afterwards, on the 2d day of December, 1884, came said parties and filed their stipulation waiving trial by jury, as follows:

Circuit Court of the United States, Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,
vs.
THE CITY OF WATERTOWN, Defendant.

22 Now come the parties above named, by their counsel, and hereby stipulate and agree that the issues of fact in said cause may be tried by the court without the intervention of a jury, which is hereby waived.

Dated December 2d, 1884.

A. R. R. BUTLER,
Attorney for Pl'ff.
GEO. W. BIRD,
DANIEL HALL,
Attorneys for D'f't.

And on the same day, to wit, the 2d day of December, A. D. 1884, in the record of proceedings aforesaid appears the following order, to wit:

Order Striking out Replication.

Circuit Court of the United States, Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,

vs.

THE CITY OF WATERTOWN, Defendant.

This cause coming on to be tried, and the defendant having called up the motion to strike from the files the plaintiff's replication to defendant's answer—

It is ordered, upon stipulation now here made in open court, that said replication be, and the same is, stricken from the files of this court, and that plaintiff have leave to withdraw the same.

23 And the trial is concluded herein and *and* this cause taken under advisement.

And thereafter in said record of proceedings in said entitled cause appears the following entry, to wit:

Decision.

ELIAB W. METCALF, Plaintiff,

vs.

THE CITY OF WATERTOWN, Defendant.

JANUARY 17TH, 1885.

On consideration the court finds for the defendant on the plea of the statute of limitations. Let the proper findings be prepared accordingly and judgment go thereon for the defendant.

And comes the plaintiff and moves the court for a new trial.

And thereafter, to wit, on the 21st day of April, A. D. 1885, before the Hon. Walter Q. Gresham and Hon. Ramanzo Bunn, judges, in the record of proceedings aforesaid appears the following order, to wit:

ELIAB W. METCALF, Plaintiff,

vs.

THE CITY OF WATERTOWN, Defendant.

The motion for a new trial coming on to be heard and having been argued by counsel, and the court being now sufficiently

24 advised doth order that the motion for a new trial herein be, and the same is hereby, overruled.

And on the same day, to wit, said 21st day of April, A. D. 1885, the following findings were made and filed, to wit:

Findings.

United States Circuit Court, Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,

vs.

THE CITY OF WATERTOWN, Defendant.

A jury having been duly waived herein by written stipulation signed by counsel of both parties, duly filed, and this action having been duly brought to trial before this court without a jury, at the December term thereof for the year 1884, upon the issues joined by the complaint and answer herein the following findings of fact and conclusions of law are hereby made and filed herein by the court and the judge thereof, to wit:

Findings of Fact.

1. That at a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held at the city of Milwaukee on the second Monday (being the 9th day) of April, 1866, one Pitkin C. Wright, then plaintiff, recovered a judgment which was duly given by said last above-men-
25 tioned court against the defendant above named upon the 8th day of May, 1866, for the sum of ten thousand one hundred and fifty dollars and forty-six cents damages, together with the sum of fifty-seven dollars and forty cents costs and disbursements, amounting in all to the sum of ten thousand two hundred and seven dollars and eighty-six cents, in an action at law wherein the said Pitkin C. Wright was plaintiff and the defendant herein was defendant.

2. That on or about the 24th day of April, 1872, the said Pitkin C. Wright, for a valuable consideration, duly assigned twenty-five sixty-firsts ($\frac{25}{61}$) of the whole of said judgment to one Fanny B. Ely.

3. That on or about the 24th day of August, 1872, the said Pitkin C. Wright, for a valuable consideration, duly assigned fifteen sixty-firsts ($\frac{15}{61}$) of the said judgment to Samuel S. Beach.

4. That on or about the 8th day of August, 1873, the said Pitkin C. Wright, for a valuable consideration, duly assigned the remainder of said judgment to the said Fanny B. Ely and Samuel S. Beach.

5. That on or about the 30th day of August, 1873, the said Fanny B. Ely and the said Samuel S. Beach, being then the owners of the whole of said judgment, for a valuable consideration assigned the whole of said judgment to Eliab W. Metcalf, the plaintiff in this action.

6. That all of said assignments were duly filed and recorded
26 in the office of the clerk of the said United States circuit court for the district of Wisconsin, in the city of Milwaukee, on or about the 8th day of September, 1873.

7. That the said plaintiff, Eliab W. Metcalf, is now and was at

the time of the commencement of this action the owner of said judgment and of the whole thereof.

8. That the said judgment has not been appealed from, reversed, or satisfied, and that no part thereof has been paid.

9. That the *præcipe* in this action was filed with the clerk of this court and the summons issued herein on the 29th day of June, 1883, and not before, and said summons was that day and not before placed in the hands of the marshal for service.

10. That a copy of the summons herein was delivered to Henry Bieber, and also a copy thereof to Charles H. Gardner, city attorney, and also a copy thereof to Fred. Kusel, the last elected chairman of the board of street commissioners of said defendant city, on the 2d day of July, 1883, and not before.

11. That on the 23d day of July, 1883, and not before, the said defendant appeared in this action, by its attorneys, George W. Bird and Daniel Hall, by that day serving on the plaintiff's attorney a notice of retainer and appearance herein signed by said George W. Bird and Daniel Hall, attorneys for said defendant.

27 12. That this action was not commenced at any time before the 29th day of June, 1883, the said date of the filing of the *præcipe* herein, and that the process by which this action was begun was not issued before said date.

13. That this action was not commenced within ten years from the time when the cause of action herein accrued.

14. That the cause of action set out in the complaint herein did not accrue within ten years next before the commencement of this action.

15. That this action was commenced within twenty years from the time when the cause of action accrued, but was not commenced within ten years from the time when the same accrued.

Conclusions of Law.

1. That the cause of action set out in the complaint herein did not accrue within ten years next before the commencement of this action.

2. That this action is and at the time of its commencement was barred by the statute of limitations.

3. That the defendant is entitled to judgment herein that the plaintiff take nothing by his action, and that the defendant go thereof without day, and that the defendant have and recover his costs of this action, to be taxed.

28 Dated at Madison, Wis., April 21st, 1885.

By the court:

ROMANZO BUNN,
District Judge.

And on said 21st day of April, 1885, came the plaintiff and filed his exceptions to conclusions of law as follows:

Exceptions to Conclusions of Law.

United States Circuit Court, Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,
vs.
THE CITY OF WATERTOWN, Defendant.

Now comes the plaintiff above named, by his attorneys, and specifically excepts to each of the following conclusions of law found by said court in the above-entitled action—that is to say:

Plaintiff excepts to the second of said conclusions of law, which is as follows: "That this action is and at the time of its commencement was barred by the statute of limitations."

Plaintiff excepts to the third of said conclusions of law, which is as follows: "That the defendant is entitled to judgment herein that the plaintiff take nothing by his action, and that the defendant go thereof without day, and that the defendant have and recover of the plaintiff his costs of this action, to be taxed."

A. R. R. BUTLER AND
C. E. MONROE,
29 *Plaintiff's Attorneys.*

And on the 22d day of April, A. D. 1885, the following proceedings were had, to wit:

Judgment.

United States Circuit Court, Western District of Wisconsin.

ELIAB W. METCALF, Plaintiff,
vs.
THE CITY OF WATERTOWN, Defendant.

The *præcipe* herein having been filed and the summons herein having been issued and placed in the hands of the marshal for service on the 29th day of June, 1883, and copies of said summons having been delivered, one to Henry Bieber, city clerk, and one to Charles H. Gardner, city attorney, and one to Fred. Kusel, the last-elected chairman of the board of street commissioners of said city, on the 2d day of July, 1883, and the defendant having duly appeared herein on the 23d day of July, 1883, and demanded a copy of the complaint herein, and the said complaint having been duly served on the defendant's attorneys on the 7th day of August, 1883, and the defendant's answer to said complaint having been duly served on the plaintiff's attorney on the 18th day of August, 1883, and plaintiff's replication to said answer having been served on defendant's attorneys on the 8th day of December, 1883, and the said replication having been duly returned to the plaintiff's at-
30 torney by the defendant's attorneys on the 8th day of December, 1883, and the said replication having been duly stricken from the files of this court upon motion of the defendant and stipulation of parties made in open court on the 2d day of December,

1884, and a jury having been duly waived by a written stipulation of the parties duly made and filed herein, and this action having been brought to trial upon the issues joined by said complaint and answer at the December term of this court for the year 1884, to wit, on the 2d day of December, 1884, before the court without a jury, Justice Bunn, district judge, presiding, and the case having been taken under advisement, and the court having announced its decision on the 17th day of January, 1885, finding in favor of the defendant on its plea of the bar of the statute of limitations, and the clerk of this court having entered such decision on page 11, Law Docket B, incorrectly, as follows: "On consideration it is ordered that plaintiff's demurrer to defendant's answer be overruled, and judgment goes for defendant," and a stay of proceedings and motion for a new trial and reargument before the full bench having been entered herein on the 26th day of January, 1885, and notice of motion for a new trial and leave to amend the said complaint having been served by plaintiff's attorney on defendant's attorneys on the 10th day of April, 1885, and the said several motions having been duly heard and argued before this court at the December term thereof for the year 1884, to wit, on the 21st day of April, A. D. 1885, Justices Gresham and Bunn
31 presiding, and the same having been then duly denied, and the said entry of the clerk, on page 11, Law Docket B, having been, by order of the court, duly corrected on said 21st day of April, 1885, so as to read: "On consideration the court finds for defendant on its plea of the statute of limitations. Let the proper findings be prepared accordingly and judgment go thereon for the defendant;" and the court having duly made and filed its written findings of fact and conclusions of law on the 21st day of April, 1885, wherein it is found, among other things, as conclusions of law that the cause of action set out in the complaint herein did not accrue within ten years before the commencement of this action, and that this action is and at the time of its commencement was barred by the statute of limitations, and that the defendant is entitled to judgment herein that the plaintiff take nothing by his action, and that the defendant go thereof without day, and that it have and recover of the plaintiff the costs of this action to be taxed:

Now, therefore, on motion of George W. Bird and Daniel Hall, attorneys for the said defendant, it is hereby ordered and adjudged that the plaintiff take nothing by his action, and that the defendant go thereof without day, and that the defendant, The City of Watertown, have and recover of the plaintiff, Eliab W. Metcalf, the sum of eighteen dollars and fifty cents, the costs and disbursements of this action.

Dated April 22d, A. D. 1885.

By the court:

32 F. M. STEWART, *Clerk.*

And afterwards, to wit, on the 28th day of May, 1885, came plaintiff and filed the following consent to substitution of attorneys herein:

Substitution of Attorney.

Circuit Court of the United States for the Western District of Wisconsin.

ELIAB W. METCALF, Pl'ff,
vs.
THE CITY OF WATERTOWN, D'f't.

I hereby consent to the withdrawal from said cause of A. R. R. Butler, Esq., plaintiff's attorney of record therein, and consent that Charles E. Monroe, Esq., of Milwaukee, Wis., shall be substituted in his place as attorney.

Dated May 26, 1885.

E. W. METCALF.

With the consent and under the direction of the plaintiff aforesaid I hereby withdraw from said cause and consent that Charles E. Monroe, Esq., of Milwaukee, Wis., be substituted in my place as attorney of record for said plaintiff in said cause.

Dated May 26, 1885.

A. R. R. BUTLER.

33 Whereupon the following order was made and entered in said cause, to wit:

Order of Substitution.

ELIAB W. METCALF, Plaintiff,
vs.
THE CITY OF WATERTOWN, Defendant.

MAY 28, 1885.

On reading and filing the consent in writing signed by Eliab W. Metcalf, plaintiff, and consent in writing signed by A. R. R. Butler, plaintiff's attorney of record—

Ordered that Charles E. Monroe, of Milwaukee, be substituted in his place and stead.

And on the 27th day of August, A. D. 1885, came said plaintiff, by his attorney, and filed security on writ of error, to wit:

Security on Writ of Error.

Know all men by these presents that we, Eliab W. Metcalf, of Elyria, Ohio, and Frederick N. Finney, of Milwaukee, Wisconsin, are held and firmly bound unto the city of Watertown, of the State of Wisconsin, in the full and just sum of five hundred dollars, to be paid to the said city of Watertown, its certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the seventh day of August, in the year of our Lord one thousand eight hundred and eighty-five.

34 Whereas lately at a session of the circuit court of the United States for the western district of Wisconsin, begun and held at Madison, in said district, on the 2d day of December, A. D. 1884, a final judgment was rendered against the said Eliab W. Metcalf in a suit depending in said court between the said Eliab W. Metcalf, plaintiff, and the said City of Watertown, defendant; and the said Eliab W. Metcalf having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said city of Watertown citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Eliab W. Metcalf shall prosecute said writ of error to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ELIAB W. METCALF. [SEAL.]
F. N. FINNEY. [SEAL.]

Sealed and delivered in presence of—
GEORGE B. BRIGHT,
M. M. METCALF,
Witnesses to signature of E. W. Metcalf.
J. R. JACOBS,
C. E. MONROE,
Witnesses to signature of F. N. Finney.

The above bond is hereby approved.

R. BUNN,
District Judge.

35 And thereafter, and on the 31st day of August, 1885, came plaintiff, by his attorney, and filed original citation on writ of error as follows, viz.:

The United States of America to The City of Watertown, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Wisconsin, wherein Eliab W. Metcalf is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. Bunn, judge of the district court of the United States for western dist. of Wis., this 27th day of August, in the year of our Lord one thousand eight hundred and eighty-five.

R. BUNN,
District Judge.

36 On this — day of ——, in the year of our Lord one thousand eight hundred and eighty-—, personally appeared —— —— before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — ——, A. D. 188–.

—— ——.

Due and personal service of the within citation upon us by delivery to us of a copy thereof this 29th day of August, 1885, is hereby admitted.

GEO. W. BIRD,
DANIEL HALL,
Att'ys of Record for The City of Watertown, Defendant in Error.

[Endorsed:] Eliab W. Metcalf *vs.* The City of Watertown. Citation in error. Filed August 31, 1885.

37 Endorsed:

Due and personal service of the within citation upon us by delivery to us of a copy thereof this 29th day of August, 1885, is hereby admitted.

GEORGE W. BIRD,
38 DANIEL HALL,
Att'ys of Record for the City of Watertown, Defendant in Error.

Certificate to Transcript.

UNITED STATES OF AMERICA, } *ss:*
Western District of Wisconsin, }

I, F. M. Stewart, clerk of the circuit court of the United States for the western district of Wisconsin, do hereby certify that I have compared the above and foregoing with the original record and proceedings now remaining of record and on file in my office in the above-entitled cause, and that it is a correct transcript therefrom, and also a true copy of the security on writ of error and original citation on writ of error.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court, at my office, in the city of Madison, in said district, this tenth day of September, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and 10th.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin.]

F. M. STEWART, *Clerk.*

And came the plaintiff, by his attorney, and filed assignment of errors as follows:

Assignment of Errors.

39 In the Supreme Court of the United States.

ELIAB W. METCALF, Plaintiff in Error,
vs.
THE CITY OF WATERTOWN, Defendant in Error.

Afterwards, to wit, on the 12th day of October, A. D. 1885, before the justices of the Supreme Court of the United States, at the Supreme Court room in the city of Washington, comes the said Eliab W. Metcalf, by Charles E. Monroe, his attorney, and says that in the record and proceedings aforesaid and also in the giving of the judgment aforesaid there is manifest error in this, to wit, that the within finding of facts by the circuit court does not support the said judgment entered thereon. There is also error in this, to wit, that the answer aforesaid and the matters therein contained are not sufficient in law to bar or preclude the said Eliab W. Metcalf from having and maintaining his aforesaid action thereof against the satd City of Watertown. There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said City of Watertown against the said Eliab W. Metcalf, whereas by the law of the land the said judgment ought to have been given for the said Eliab W. Metcalf against the said City of Watertown.

And the said Eliab W. Metcalf prays that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment.

CHARLES E. MONROE,
Attorney for Plaintiff in Error.

Endorsed on cover: W. Wisconsin C. C. U. S. No. 357. Eliab W. Metcalf, plaintiff in error, *vs.* The City of Watertown. Filed October 9, 1885.

Amended Assignment of Errors.

In the Supreme Court of the United States.

ELIAB W. METCALF, Plaintiff in Error,

vs.

THE CITY OF WATERTOWN, Defendant in Error.

And now comes Eliab W. Metcalf, the plaintiff in error above named, by Charles E. Monroe, his attorney, and files this his amended assignment of errors, and says that in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid, there is manifest error, in this, to wit: that the second defence or plea to said action set forth in the answer aforesaid of the said City of Watertown and the matters therein contained are not sufficient in law to bar or preclude the said Eliab W. Metcalf from having and maintaining his aforesaid action thereof against the said City of Watertown, nor sufficient to sustain said judgment.

There is also error, in this, to wit: that the said general finding of the said circuit court for the western district of Wisconsin for the said City of Watertown upon its said second defence or plea, or, as is stated in said finding, "on the plea of the statute of limitations," is not sufficient in law to bar or preclude the said Eliab W. Metcalf from having and maintaining his said action against said City of Watertown, nor sufficient to sustain said judgment.

There is also error, in this, to wit: that the said special findings of fact of the said circuit court and the matters therein contained are not sufficient in law to bar or preclude him, the said Eliab W. Metcalf, from having and maintaining his aforesaid action thereof against the said City of Watertown, nor sufficient to sustain the said judgment.

There is also error, in this, to wit: that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said City of Watertown against the said Eliab W. Metcalf, whereas by the law of the land the said judgment ought to have been given for the said Eliab W. Metcalf.

And the said Eliab W. Metcalf prays that the judgment aforesaid, for the errors aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment.

CHARLES E. MONROE,
Attorney for Plaintiff in Error.

[Endorsed:] Supreme Court of the United States. October term, 1887. No. 357. Eliab W. Metcalf, pl'ff in error, *vs.* The City of Watertown, def't in error. Amended assignment of errors. C. E. Monroe, att'y for pl'ff in error. (Stamped:) Office Supreme Court U. S. Filed Nov. 26, 1887. James H. McKenney, clerk.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 90.

ELIAB W. METCALF, PLAINTIFF IN ERROR,

vs.

THE CITY OF WATERTOWN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

Brief for Plaintiff in Error.

CHARLES E. MONROE,
Attorney for Plaintiff in Error.

Supreme Court of the United States.

ELIAB W. METCALF,
Plaintiff in Error.

vs.

THE CITY OF WATERTOWN,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

On the eighth day of May, 1866, a judgment was obtained by one Pitkin C. Wright, in the Circuit Court of the United States for the then District of Wisconsin, against the City of Watertown, in the State of Wisconsin, for the sum of $10,207.86. This judgment, by a series of assignments, afterwards became the property of Eliab W. Metcalf, the plaintiff in error, a citizen of Ohio. The present action is upon that judgment and was commenced in June, 1883, in the Circuit Court of the United States for the present Western District of Wisconsin, in which the City of Watertown is now situated. All these facts are duly set forth in the complaint. The answer filed by the defendant in error denied that plaintiff owns the judgment sued on, but admitted all the other allegations of the complaint; and for a second and further defense, alleged that the action was barred by the state statute of limitations, because it was not commenced within ten years after the rendition of the judgment sued on. A replication was filed, setting up matters

in avoidance of the plea of the statute of limitations, but was afterwards withdrawn from the files. A jury trial was waived by written stipulation of the parties, duly filed, and the cause was tried by the court, without the intervention of a jury, at the December term, 1884. After due consideration, on the seventeenth day of January, 1885, the Court announced its decision in favor of the defendant, on its plea of the statute of limitations. Special findings were then filed by the Court, in which all the issues of fact raised by the pleadings were decided in the plaintiff's favor; but upon these findings judgment was ordered to be entered in favor of the defendant on the ground that the action was barred by the statute of limitations, because not commenced within ten years after the cause of action accrued. Judgment was entered accordingly for the defendant on the twenty-second day of April, 1885. From the judgment so entered the plaintiff has taken out this writ of error.

That part of the answer in which the bar of the statute of limitations was pleaded as a defense to the action, was in the following words:

"For a second and further defense to said action, and to the whole cause of action stated in said complaint, the said defendant further alleges that the said cause of action stated in said complaint did not accrue within ten years next before the commencement of this action, and did not accrue within ten years next before the first day of November, 1878; that this action was not commenced within the ten years limited by law for the commencement thereof after the same accrued, and that on and at the end of the eighth day of May, 1876, the said action became and was and ever since has been barred by the statute of limitations of the State of Wisconsin."

The findings of the Circuit Court, or such parts thereof as are important to an understanding of the questions involved, are as follows:

1. That at a stated term of the Circuit Court of the United States of America for the Ninth Circuit and District

of Wisconsin, begun and held at the City of Milwaukee on the second Monday, being the ninth day, of April, A. D. 1866, one Pitkin C. Wright, then plaintiff, recovered a judgment which was duly given by said last above mentioned Court, against the defendant above named, [the City of Watertown,] upon the eighth day of May, 1866, for the sum of $10,150.46, damages, together with the sum of $57.40, costs and disbursements, amounting in all to the sum of $10,207.86, in an action at law wherein the said Pitkin C. Wright was plaintiff and the defendant herein was defendant.

Findings two to six, inclusive, simply trace the series of transfers by which the plaintiff in error became the owner of this judgment.

7. That the said plaintiff, Eliab W. Metcalf, is now and was at the commencement of this action, the owner of said judgment and the whole thereof.

8. That the said judgment has not been appealed from, reversed, or satisfied, and that no part thereof has been paid.

Findings 9, 10 and 11, recount the various steps from the issue of summons to the appearance of defendant by its attorneys.

12. That this action was not commenced at any time before the twenty-ninth day of June, 1883, the said date of the filing of the praecipe herein, and that the process by which this action was begun was not issued before said date.

13. That this action was not commenced within ten years from the time when the cause of action herein accrued.

14. That the cause of action set out in the complaint herein did not accrue within ten years before the commencement of this action.

15. That this action was commenced within twenty years from the time when the cause of action accrued.

With these special findings of facts, there were filed the following conclusions of law:

1. That the cause of action set out in the complaint herein did not accrue within ten years next before the commencement of this action.

2. That this action is and at the time of its commencement was barred by the statute of limitations.

3. That the defendant is entitled to judgment herein that the plaintiff take nothing by his action and that the defendant go thereof without day, and that the defendant have and recover of the plaintiff his costs of this action to be taxed.

To the second and third of these conclusions of law the plaintiff filed written exceptions, a proceeding which, however, does not seem to be required in the federal courts.

ASSIGNMENT OF ERRORS.

Upon this record the following errors are assigned.

1. That the second defense contained in the defendant's answer, setting up the statute of limitations, and the matters therein contained, are not sufficient in law to bar the action, nor to sustain a judgment in favor of the defendant.

2. That the general finding of the Circuit Court in its decision announced on the seventeenth day of January, 1885, wherein the court found for the defendant "On the plea of the statute of limitations," is not sufficient in law to bar the action, nor to sustain a judgment in favor of the defendant.

3. That the special findings filed by the Circuit Court and the matters therein contained are not sufficient to bar the action, nor to sustain a judgment in favor of the defendant.

4. That judgment was given for the City of Watertown, the defendent in error, when it ought to have been given for Eliab W. Metcalf, the plaintiff in error.

THE ARGUMENT.

There has never been in this case any real controversy over the facts. The only questions involved are questions of law. The validity of the claim sued on is not denied. The defense is that it is barred by the State statute of limitations. The defendant contends that as the action was not brought within ten years after the recovery of the judgment, it was brought too late. The plaintiff, on the other hand, insists that he had twenty years in which to sue, and that as he brought his action within that time, he is entitled to a judgment in his favor.

The provisions of the Wisconsin statute of limitations upon this subject are found in sections 14, 15 and 16 of chapter 138 of the Revised Statutes of 1858, which read as follows:

Section 14. The periods prescribed * * * * * for the commencement of actions, other than for the recovery of real property, shall be as follows:

Section 15. Within twenty years:

1. An action upon a judgment or decree of any court of record of this State.

2. An action upon a sealed instrument, when the cause of action accrues within this state.

Section 16. Within ten years:

1. An action upon a judgment or decree of any court of record of any state or territory within the United States, or of any court of the United States.

2. An action upon a sealed instrument when the cause of action accrued without this state.

Three questions arise under this statute:

Does the Wisconsin statute, properly interpreted, make any distinction between the judgments of the Federal courts and those of the State courts of the State of Wisconsin in this matter of the limitation of actions?

If so, is such a discrimination of any validity whatever, even in the courts created by the State?

If valid as to actions brought in the State courts does the law apply in cases of actions brought in the Federal courts of the State to enforce their own judgments?

A.

Does the Wisconsin statute, properly interpreted, make any discrimination between the judgments of the Federal courts and the State courts of the State of Wisconsin?

The plaintiff in error believes that the Circuit Court in and for the former District of Wisconsin, and the Circuit Courts in and for the present Eastern and Western Districts of Wisconsin, are both courts of record and courts of the State of Wisconsin, and that for this reason the present action is governed by section 15, just quoted, which allows twenty years for bringing "an action upon a judgment of *any* court of record of this State." This interpretation gives the words of this section their grammatical, natural and obvious meaning.

The Federal Circuit Courts of Wisconsin are courts "of this State:"

1. Because they are *in* the State.

2. Because their principal duty is to enforce the laws of the State and to determine the rights and liabilities of parties under those laws. In performing this duty they are bound by the acts of the legislature and by the decisions of the courts established by the State, in cases where they apply. It is only as courts of the State, in common with all other courts of the State, that they are controlled by this limitation law.

Green vs. Lessee of Neal, 6 Pet. 291, 297;
Burgess vs. Seligman, 107 U. S., 20, 34.

3. Their jurisdiction extends to and is bounded by the limits of the State. Their process, in ordinary cases, does not go beyond the State. Their judgments are liens in the State. Their jurors are the citizens of the State. They receive in evidence the records of the State courts

without other authentication than the seal of their clerk, and their own records are received in the same way in the State courts. They are always spoken of as domestic courts of the State and never as foreign in any sense.

Claflin vs. Houseman, 93 U. S., 130, 137;
Turnbull vs. Payson, 95 id. 418, 423;
Mewster vs. Spalding, 6 McLean, 24;
Barney vs. Patterson's Lessees, 6 H. & J. 182.

4. The same question has arisen under the laws of other states and it has always been held that the Federal courts of those states are included in similar expressions.

Ex Parte Schollenberger, 96 U. S., 369; where the words were: "Any Court of this Commonwealth," i. e., Pennsylvania.

Simon vs. Mann, 33 Minn., 412; where the words were: "A Court of record of this State," i. e. Minnesota.

5. The Federal courts of Wisconsin had always been understood to be governed by the same rule as the State courts, up to the time when the decision in this case was announced. This was settled by the decision of Judges Drummond and Miller in 1870, in a case where the same statute was pleaded in bar of an action upon a judgment. A certified abstract of the case is on file in this court. It reads as follows:

"Circuit Court of the United States for the District of Wisconsin.

Presiding, the Honorable Thomas Drummond, Circuit Judge, and the Honorable Andrew G. Miller, District Judge.

Merritt T. Cole *vs.* Henry A. Weil and another.

This was an action of debt, commenced the thirty-first day of March, 1870, upon a judgment recovered on the second day of December, 1856, by Daniel C. Hyde, and another, against the same defendants in the then District Court of the United States for the District of Wisconsin, and afterwards assigned to this plaintiff.

To this action each of the defendants pleaded the statute

of limitations as follows: 'And says that the said plaintiff ought not to have and maintain his aforesaid action thereof, against him, because he says that the said action was not commenced within ten years next succeeding the recovery or rendition of the said judgment in the declaration in this action mentioned and declared upon.' The plaintiff demurred to these pleas, and the matters contained in them, as not being sufficient in law to bar or preclude him from having or maintaining his said action. Then comes the following entry in the record of the case:

'June 30, 1870. This day came the parties by their counsel, and the demurers of the plaintiff, to the several pleas of the defendant, being argued and submitted: On consideration thereof, it is ordered by the court that the said demurrers be and are hereby sustained and that the said defendants plead over by the first Monday of August, next, or their default will be entered.'

The defendants failing to plead over, judgment was afterwards taken against them by default.

EASTERN DISTRICT OF WISCONSIN: ss.

I hereby certify the above statement to be correct. Witness my hand, and the seal of said court at Mil-
[SEAL.] waukee, this twenty-third day of December, 1887.
EDWARD KURTZ, Clerk."

But counsel for the defendant in error, seek to elude the true intent of the statute by diverting attention from section 15 to section 16, and claim that the latter section prescribes the limitation for this action, because it has in it the words "any court of the United States." It is argued that these words include the Federal courts of Wisconsin. So they do, taken by themselves. But this section also contains these words: "Any court of record of any state or territory within the United States." Taken by themselves these words include the State courts of Wisconsin. If we were to take this section by itself, it would include every court of record within the United States, State and Federal. Its

language is very nearly the same as that of section 41, chapter 127, of the Revised Statutes of 1849, cited hereafter, and that again a repetition of the Territorial Laws of 1839, which put all judgments, wherever rendered, on the same footing. Its terms include the State as well as the Federal courts of Wisconsin. Taken by itself, it lays down a universal rule fixing the limitation upon all actions upon judgments of all courts of record, foreign and domestic. Yet clearly, that was not the intention of the legislature. Another rule had already been laid down in the fifteenth section for some of the very cases included by the comprehensive terms of the sixteenth. If we take the latter section literally, i. e., by itself, it contradicts the former, and under a statutory rule of construction, repeals the whole of it, for:

"If conflicting provisions be found in different sections of the same chapter, the provisions of the section which is last in numerical order shall prevail, unless such construction be inconsistent with the meaning of such chapter."

Revised Statutes of 1858, Chapter 191, Sec. 12.

Such a construction is absurd. Statutes must be so construed as to make sense. The loose wording of the law must not prevent its having the effect which the legislature intended. What had been provided for by the fifteenth section must be held to be excepted, by implication, from the sixteenth. We shall harmonize and give full effect to both sections by simply adding after the latter one the words: "except courts of record of this State;" or, what is the same thing: "excepting the courts referred to in the preceding section;" or, better still, by bringing up from the second subdivision of this section, as properly belonging to both subdivisions, the words: "When the cause of action accrued without this State."

"Words and expressions inaccurately used will be given the sense intended where it appears upon the whole face of the act. Even in opposition to the strict letter, the clear

purpose of the legislature, as apparent on inspection of the statute itself, will be carried out."

Bishop on Statutory Crimes, Secs. 81 and 82.

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always therefore be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law, in such cases, should prevail over its letter."

United States vs. Kirby, 7 Wall, 482,486;
Atkins vs. Fiber Disint. Co., 18 Wall. 272, 301;
Heydenfeldt vs. Daney G. &. S. M. Co., 93 U. S. 634.

"The true rule for the construction of statutes is to look to the whole and every part of the statute and the apparent intention derived from the whole, to the subject matter, to the effect and consequences, and to the reason and spirit of the law; and thus to ascertain the true meaning of the legislature, though the meaning so ascertained may sometimes conflict with the literal sense of the words."

Harrington vs. Smith, 28 Wis. 43, 59; and see also
Nichols vs. Halliday, 27 Id. 406, 409; and
Storm vs. Adams, 56 Id. 137, 143.

We have so far examined only the first half of sections 15 and 16. A reference to the second subdivision of each section will show that the intention of the legislature in these sections was not to discriminate between different courts in the State, or between any causes of action arising within the State, but to disciminate between causes of action arising within the State, and those arising without the State; the place where the cause of action originated being the controlling consideration in both sections. If within the State, the intention of the legislature was to allow the action to be brought within twenty years, whether it be an action upon a judgment or a specialty; if without the State, in

either case, within ten years. We certainly cannot suppose that the legislature intended to place the judgments of the Circuit Courts of the United States, in the State, upon a plane of dignity inferior to deeds.

Further confirmation of this view is to be found in acts relating to the subject of executions, passed in 1866 and 1868, while these provisions of the Revised Statutes of 1858 were still in force. These laws, by their terms allowed execution to issue on all judgments of courts of record, under certain restrictions, for a period of twenty years after their rendition.

The act of 1866, just mentioned, as amended by that of 1868, reads as follows:

"Upon any judgment which has heretofore been or may hereafter be rendered or docketed in any court of record in this State, execution may be issued at any time within five years after the rendition or docketing thereof, and *alias executions may be issued thereon at any time thereafter.* But in cases where no execution has been issued within said five years, execution shall only be issued upon leave granted by the court or a judge thereof, or a county judge, or court commissioner; and such leave shall not be granted by any such court or officer, unless it appear to his satisfaction, by the affidavit of the party, his agent or attorney, that the judgment, or some part thereof, remains unsatisfied and due; *provided, that no execution shall issue*, nor any action or proceedings be had upon any such judgment *after twenty years from the time of the rendition or docketing thereof.*"

Laws of Wisconsin, 1866, Ch. 14; same, 1868, Ch. 11.

These provisions make no discrimination against judgments of the Federal courts; and, taken in connection with the provisions in force at the same time respecting the limitation of actions, must be considered as an authoritative legislative declaration that judgments of both the State and Federal courts were intended to be put upon the same footing as respects the time during which they might

be enforced, whether by execution or action; for why should judgments of the Federal courts be allowed to be enforced by execution after the time had run within which they could be enforced by action? That could not have been the intention of the legislature. The bearing of this statute was plainly overlooked in the case of Waterman, exec'x, *vs.* Waterloo, 69 Wis. 260, to which we shall presently have occasion to refer.

It is also a singular fact that the law of Wisconsin under the Revised Statutes of 1858, if it be such a law as is claimed by the defendant in error, is the only law of the kind to be found in the entire history of the limitation laws, not only of the State of Wisconsin, but of all the states of the Union.

The Wisconsin Revised Statutes of 1849 did not discriminate between the judgments of Federal and State courts; the Revised Statutes of 1878, now in force, do not. A careful examination of all the state and territorial laws contained in the appendices of Angell's and Wood's works on "Limitations," fails to find a single instance of such a discrimination unless this is one.

The provisions of the Wisconsin Revised Statutes of 1849, as found in Chapter 127, Section 41, which was a repetition of the Territorial statutes of 1839, were as follows:

"Every judgment and decree in any court of record of the United States or of any state or territory of the United States, shall be presumed to be paid and satisfied at the expiration of twenty years after the judgment or decree was rendered."

The provisions of the Revised Statutes of 1878 are as follows:

Sec. 4219. The following actions must be commenced within the periods respectively hereinafter prescribed after the cause of action has accrued:

Section 4220. Within twenty years:

1. An action upon a judgment or decree of any court of record of this State, or of the United States, sitting within this State.

2. An action upon a sealed instrument when the cause of action accrues within this State, except those mentioned in section 4222.

Section 4221. Within ten years:

1. An action upon a judgment or decree of any court of record of any other state or territory of the United States, or of any court of the United States sitting without this State.

2. An action upon a sealed instrument when the cause of action accrued without this State, except those mentioned in the next section.

In our efforts to get at the meaning of the provisions of the Revised Statutes of 1858, we must remember that the rule is that, where the statutes of a state have been revised, the revision is to receive the same interpretation as had been given to the old law, except where a different intention is clearly manifested.

Bishop on Statutory Crimes, Secs. 97 and 98;
Meyer vs. Car Co., 102 U. S., 1, 11;
McDonald vs. Hovey, 110 id. 619, 629;
U. S. vs. Ryder, ibid. 729, 739;
Mundt vs. Sh. & Fond du Lac R. R. Co., 31 Wis. 451, 456, 463.

This rule has frequently been recognized in Wisconsin, where it has often been held that the provisions of the civil code of 1856, broken up and scattered through the different chapters of the Revised Statutes of 1858, and sometimes appearing there in the most incongruous connections, were to have the same interpretation as before.

State *ex rel.* Att'y. Gen. vs. Messmore, 14 Wis. 115, 118;
Smith vs. Smith, 19 id. 522.

As to any inference drawn from the change of language in the Revised Statutes of 1878 affecting the interpre-

tation of the Revised Statutes of 1858, the rule is simply the reverse of the one just stated. The change of language is not to be taken as changing the law but as reenacting the old law in clearer language.

"We should be in danger of doing injustice to the Revised Statutes, if we did not bear in mind in construing them that where a new provision is substituted for an old one in somewhat different terms, a change of language does not always indicate an intent to change the rule."

Harwood vs. City of Lowell, 4 Cush. 310, 312; cited with approval in the case of

Mundt vs. The S. & F. du L. R. R. Co., 31 Wis. 451, 463;

Mead vs. Bagnall, 15 id. 156, 160;

Redmond vs. Gal. & South. Wis. R'y Co., 39 id. 426, 431.

There is another rule also, which has been recognized by the Supreme Court of Wisconsin, that in the construction of a statute it is proper to consider the laws of other states relating to the same subject and designed to promote the same end, where all have been derived from a common source originally and all have been constantly influenced by each other; as is the case with our statutes of limitations.

Angell on Limitations, 14;

Harrington vs. Smith, 28 Wis. 43, 66.

If after the foregoing examination of the letter of the law, there could still remain any room for doubt as to its true meaning, that doubt must be removed by a moment's consideration of the effect of the interpretation sought to be established by the defendant in error.

The Circuit Courts of the United States, under the constitution and laws of the United States and the decisions of this Court, are of a rank and authority co-ordinate with that belonging to highest State court. Their judgments, like those

of the Supreme Court of the State, are final until reversed by this Court. They are entitled to the same respect as those of any State court, and the same effect should be given them.

Crescent City L. S. &c. Co. vs. Butchers Union &c. Co., 120 U. S., 141, 157.

But under the interpretation contended for by the defendant in error, the statute is a covert assault upon the authority of the Federal courts. It discriminates against them in such a way as to deprive them of part of their efficiency. It renders the relief which they can give less valuable than that afforded by the State courts. It puts them upon the footing of alien tribunals. Further than this, it assumes, what is, to say the least, a most doubtful power of supervision and control over the agencies of the Federal government. If any motive at all for the discrimination is to be found, it must lie in an unreasonable and narrow jealousy of the national tribunals, and of the rights of citizens of other states, which are entrusted so largely to the protection of those tribunals.

Such motives are not to be attributed to the legislature, and an interpretation which implies their existence, ought to be avoided, if possible.

Bishop on Statutory Crimes, Secs. 82, 90;
Blunt vs. Walker, 11 Wis. 334, 346;
Mundt vs. S. & F. du L. R. R. Co., 31 id. 451, 457, 458.

But it is superfluous to accumulate citations on this point.

Is this court precluded from considering for itself this question of the interpretation of the Wisconsin statute?

After the present action had been brought and judgment entered in it, and after this writ of error had been taken out, an action was brought in one of the State circuit courts by a citizen of Michigan against the Town of Waterloo, a municipal corporation within the same county as the City

of Watertown, upon several causes of action, one of which was a judgment obtained almost twenty years before by the plaintiff's testator against the Town of Waterloo in the United States Circuit Court of the District of Wisconsin. This action was commenced in August, 1886, a year after the present writ of error had been sued out, and was carried through the State courts with such expedition that it was on the calendar of the Supreme Court of the State at the August term for the year 1887, and a decision was rendered in it by that court on the twentieth day of September in that year. The case was that of Ella H. Waterman, Admx. *de bonis non*, vs. The Town of Waterloo, and the decision will be found reported in 69 Wis. 260. It is there decided that the statute which governed that case and this did intend to discriminate against the judgments of the Federal courts of the State, and limited the time for bringing actions upon them, to ten years, while it allowed twenty years for suing upon judgments of the State courts.

It is submitted that the right of the present plaintiff in error to an independent examination by this Court of all the questions involved in the controversy which he had already submitted to it, including the question of the true interpretation of the Wisconsin statute, is not foreclosed by the decision of the State Supreme court, rendered under such circumstances.

The general practice of this court is stated in a recent case in this way:

"Where the construction of a state constitution or law has become settled by the decision of the State courts, the courts of the United States will, as a general rule, accept it as evidence of what the local law is."

Pana vs. Bowler, 107 U. S., 529, 540.

In a still later case the following language is issued:

"It may be said, generally, that wherever the decisions of the State courts relate to some law of a local character,

which may have become established by those courts, or has always been a part of the law of the State, the decisions upon the subject are usually conclusive, and always entitled to the highest respect of the Federal courts. * *

* Where such local law or custom has been established by repeated decisions of the highest courts of a State, it becomes also the law governing the courts of the United States sitting in that State."

Bucher vs. Cheshire R. R. Co., 125 U. S. 555, 584.

But this Court has always refused to recognize, as belonging to this class of decisions, a decision of the Supreme Court of a State, unsupported by precedent, announced after the Circuit Court had rendered the judgment appealed from. Such decisions do not have the character of established precedent, declarative of the settled law of the State. Where a cause has been brought into the Federal courts, unfettered by decisions of the State courts, it is the duty as well as the right of the former to exercise their own independent judgment. If the rule were otherwise, the Federal courts would be mere registers of the decisions of the State courts. Cases might be gotten up in the State courts for the very purpose of anticipating the decision of cases pending in the Federal courts; and citizens of another State, resorting to the Federal courts, would be deprived of that protection from local passion or prejudice which those courts were created to secure to them.

Pease vs. Peck, 18 How. 595, 598;
Town of Roberts vs. Bolles, 101 U. S. 119, 128;
Railroad Co. vs. National Bank, 102 id. 14, 29, 53;
Burgess vs. Seligmann, 107 id. 20, 33-35;
Carroll Co. vs. Smith, 111 id. 556, 562, 563.

In the second place, it is only as to questions of purely local law that State decisions are ever regarded as controlling; and by local laws we understand such laws as primarily and mainly affect the rights and interests of the

State or some part of its inhabitants or some portion of them. Where nothing more than this is involved, the settled decisions of the State courts are followed by the Federal courts.

But the present case is not one of this sort. The law under discussion primarily and mainly affects the authority of courts which have been established by Congress and the rights of persons who are not citizens or residents of Wisconsin. The question raised involves more than the interpretation of a local statute. The interpretation of this law involves a consideration of the nature and character of the Federal courts under the constitution of the United States, and the relation of those courts to the State where they are situated. Such a question is not a mere local matter. It is of national importance and concern. It involves considerations of public policy reaching far beyond the limits and interests of a single State. It cannot be settled by the decision of a State Supreme Court. Whenever such questions have been involved, this Court has always exercised the right to put its own interpretation not only upon State laws but even upon State constitutions, even though a different construction had already been put on them by the State courts.

U. S. *ex rel.* vs. Muscatine, 8 Wall, 575, 584;
Olcott vs. Fond du Lac Co., 16 id. 678, 689;
Mohr vs. Manierre, 101 U. S. 417, 421—overruling Mohr vs. Tulip, 40 Wis. 66, but accepted and followed in Mohr vs. Porter, 51 Wis. 487, 494.

And whenever the validity of a State statute under the constitution of the United States has been in question, this court has always felt at liberty to put its own interpretation on the law.

Norton vs. Shelby Co., 118 U. S., 425, 439–441;
Wo Lee vs. Hopkins, ibid. 356, 365, 366.

In the third place, so far is it from being true that this decision of the Wisconsin Supreme Court is declarative of the settled law, either of that State or of the questions so shortly disposed of by it, that the very opposite is the fact; namely, that that decision is opposed to the settled law of that State as previously declared by the United States Circuit Court in the case of Cole vs. Weil, *supra*, and to the settled law of this Court as laid down in the cases of Turnbull vs. Payson, Claflin vs. Houseman, and *ex parte* Schollenberger, *supra*; all of which cases seem to have been ignored by the Supreme Court of Wisconsin, whose decision, based on the narrowest possible considerations, cannot be recognized as of any authority, under the circumstances, in the case at bar.

In the fourth place, even though the decision of the State court should be regarded as settling the interpretation of the law for future cases, yet it cannot be allowed to devest rights which have accrued under the law as previously settled. For if the decision in Cole vs. Weil, *supra*, and the long acquiesence in it, settled the law of the State up to the fall of 1887, as is claimed by the plaintiff in error, then that decision was law when the present action was commenced and protects the plaintiff in error in the assertion of his claim.

U. S. *ex rel.* vs. Muscatine, 8 Wall. 575, 584;
Olcott vs. Fond du Lac Co., 16 id. 678, 690;
Burgess vs. Seligman, 107 U. S. 20, 33;
Anderson vs. Santa Anna, 116 id. 356, 365;
Bolles vs. Brimfield, 120 id. 759, 763.

We therefore confidently submit this question as well as the others to the consideration of this Court.

B.

But leaving aside all questions of the meaning of the law and accepting, for the moment, the interpretation put upon it by the State Supreme Court, we contend that the law, so

interpreted, is void under the Constitution and laws of the United States, for two reasons, viz.:

First. On general principles, as an attempt to legislate upon matters outside of the realm of State action.

Second. For the more specific reason that it attempts to discriminate between the agencies of the State and those of the United States to the prejudice of the latter, and to the prejudice of certain interests especially committed to them.

The law in question is outside of the province of State legislation, for two reasons:

I. Because it is an attempt to define and control the powers of the Federal courts.

II. Because it is an attempt to limit and define rights of persons conferred by the Federal government.

The more specific objections above referred to also resolve themselves into two, viz.:

III. That it discriminates against the Federal courts in favor of those created by the State.

IV. That in so doing it deprives citizens of other States of rights specially conferred on them by the Constitution and laws of the United States.

The provisions of the Constitution which are involved are the following:

Art. 1, Sec. 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Art. 1, Sec. 8, Cl. 18. The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof.

Art. 3, Sec. 1. The judicial power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish.

Ibid., Sec. 2. The judicial power shall extend to controversies between citizens of different states.

Art. 4, Sec. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Art. 6, Cl. 2. This Constitution and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme law of the land.

Those laws of the United States are also involved, which have given effect to the foregoing provisions by ordaining and establishing the Circuit Courts, and conferring upon them the jurisdiction and powers which they now possess.

I.

The law is void as the exercise of a power of supervision and control over the Federal courts which does not belong to the legislature of any State.

The argument will be best stated in the language of this Court.

" The Federal courts are instruments competently created by the nation for national purposes. The States can exercise no power over them or their proceedings, except so far as Congress shall allow."

United States vs. Thompson, 98 U. S. 486, 490.

The same principle has been asserted in relation to the national banks.

" The national banks are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Being such means, brought into existence for this purpose and intended to be so employed, the States can exercise no control over them, nor in anywise affect their operation, except in so far as Congress may see proper to permit.

" This principle is indispensable to the efficiency, the independence, and, indeed, to the beneficial existence of the

General Government; otherwise it would be liable, in the discharge of its most important trusts, to be annoyed and thwarted by the will or caprice of every State in the Union."

Farmers' and Mechanics' Nat. Bank, vs. Dearing, 91 U. S. 29, 33;

Bank of Commerce vs. Commissioners of N. Y. City and County, 2 Black, 620, 632.

The leading case upon this question lays down the same principle in general terms, as follows:

"The States have no power, by taxation or otherwise, to retard, impede, burden, or in any way control the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the Federal government."

McCullough vs. Maryland, 4 Wheat. 316, 436.

We cite also the following cases:

Ableman vs. Booth, 21 How. 506. 515;

Home Insurance Co. vs Morse, 20 Wall. 445, 453;

C. & N. W. R'y Co. vs. Whitton, 13 id., 270, 286.

The judicial powers of the nation, are vested in the courts which it has created. Among these are the Circuit Courts of the United States within and for the districts of Wisconsin. They are instruments of the national government, created for national purposes. Their powers are derived from that government, and the nature and extent of these are to be determined exclusively by its laws. Like all courts, they speak and enforce their decisions only through their judgments. The effect which these shall have, and the length of time for which they shall be operative must both be beyond the control of the States. Otherwise the agencies of the judicial department of the general government are at the mercy of the States.

We maintain, then, that the State has no power, *by express legislation* to put *any limit* upon the time within which actions may be brought upon the judgments of the Federal courts, even in its own courts; that the effect which Feder-

al judgments are to have and the time within which they may be enforced by action otherwise, is for Congress alone to decide; the reason being that this is a matter affecting the authority and dignity as well as the usefulness of the Federal courts as instruments of the national government.

II.

The law is void because it is an attempt to define and limit rights of persons which have been conferred by the Federal government and are therefore subject to the control of Congress alone.

In the majority of cases, the rights which the courts are called on to enforce are created and conferred by the State, because its laws control most of the ordinary affairs and transactions of the citizen. But there are rights which are derived from the national government, and these are outside of the province of direct state legislation. The right of a Federal officer to his salary is of this sort; and this has been given as one reason for holding that the salaries of such officers cannot be taxed under State laws.

Dobbins vs. Erie County, 16 Pet. 435, 449, 450.

See also, California vs. Cent. Pac. R.R.Co., 127

When a judgment has been recovered in any court, prior rights are merged in the judgment and new ones are conferred by it.

Bishop on Contracts, Sec. 877;
Bangs vs. Watson, 9 Gray, 211.

If the court which rendered the judgment derived its powers from the State, then the new rights which attach to that judgment are conferred by the State. But where the court is created and its powers conferred by Congress, then the rights which grow out of its judgment are conferred by Congress and so come within that class of rights which is outside of State interference.

Factors' & Traders' Ins. Co. vs. Murphy, 111 U. S. 738, 741, 743.

No doubt it is true, in a general way, that rights conferred by Congress are affected or even, to a certain extent, defined by the general law of the State. That law enters into and forms part of all rights and obligations. Its provisions may be said to be in the mind of Congress, which is presumed to legislate with reference to them. But special acts, aimed directly at rights conferred by Congress, taking them out of the operation of the general law and subjecting them as a class by themselves to special rules and special limitations cannot be presumed to have been in the mind of Congress.

The nature of the interaction of Federal and State laws, and the effect which the latter may have upon the former, in matters where the authority of Congress is supreme, may be illustrated by a reference to some of the "Inter-State Commerce" decisions. These cases hold that the power to regulate commerce between the States, given to Congress by the constitution, belongs to Congress alone; that the States have no authority over the subject; and that even in the absence of regulation by Congress, "Inter-State Commerce" is free from State control. At the same time they concede that these matters are affected by the general laws of the State to this extent, that the ordinary rights of passengers and shippers and the ordinary liabilities of common carriers, are defined and governed by State law; also that the general police power of the State extends over persons and things engaged in this traffic until supplanted by congressional legislation. But it is denied that any of the interests which are by the constitution put within the protection, and under the power of Congress, can be *directly acted upon, as such*, by special laws enacted by the State legislatures.

Smith vs. Alabama, 124 U. S., 465, 473;
Robbins vs. Shelby Taxing Dist., 120 id. 489, 493;
Gloucester Ferry Co. vs. Pennsylvania, 114 id. 196, 204, 215;
Welton vs. Missouri, 91 id. 275, 282.

It follows that when Congress has established courts having authority to render judgments, it is not obliged to go farther and to declare what it means by the word "judgment," nor to specify all the rights attaching to their judgments. The word is already defined by the general law of the State; and the nature and extent of the rights conferred by federal judgments must be, for the most part, in the absence of special provision, the same as those which attach to the judgments of the State courts. The State laws affect them, not as *Federal judgments*, but simply as *judgments*. That is as far as State laws can go. They cannot set these apart in a class by themselves and declare that such and such rights shall attach to them and no others. They cannot prescribe a limitation upon actions to enforce Federal judgments different from the limitation on actions on the judgments of State courts, nor indeed, put any limitation upon them as a distinct class by themselves. That is beyond the reach of their legitimate power.

We quote further as bearing upon both branches of this argument, viz., the independence of the Federal courts and the rights of suitors therein the following decision:

"While it will not be denied that the laws of the several States are of binding authority upon their domestic tribunals, and upon persons and property within their appropriate jurisdiction, it is equally clear that those laws cannot affect either by enlargement or diminution the jurisdiction of the courts of the United States as vested and prescribed by the Constitution and laws of the United States, *nor destroy or control the rights of parties litigant to whom the right of resort to these courts has been secured by the laws and Constitution. This is a position which has been frequently affirmed by this Court, and would seem to compel the general assent upon its simple enunciation.*"

Watkins vs. Tarpley, 18 How. 517, 520; and see
Phelps vs. O'Brien County, 2 Dillon, C. C. 518;
Gibson vs. Chouteau, 13 Wall. 92, 100, 102.

III.

The law is void because of its discriminating features.

In a number of the cases which have been cited, while it was not contended that the law held invalid actually operated to the injury or prejudice of the United States or of the instrumentalities established by the United States, yet the possibility that the power claimed by the State *might*, if allowed, be exercised in such a way as to impair the operation of the laws of the Union, was considered a sufficient reason for denying the power altogether. So in the preceding argument it might have been urged that if the State has power to fix periods of limitation upon actions upon the judgments of the Federal courts then there is nothing to prevent its exercising its power in such a way as seriously to impair the value and effectiveness of such judgments, and so cripple the powers of those courts and thwart the purpose of the national government in creating them. But in view of the discriminatory features of the law we are now considering, we have no longer to consider a possible, but an actual attempt at legislation prejudicial to the authority of the Federal courts as instruments of the national government.

The relations between the States and the Federal courts sitting within their territory, have often been considered by this Court. It has uniformly been held that they are to be regarded as domestic tribunals in each State, and never as foreign, in any sense; a relation which forbids any hostile or unfriendly treatment.

Claflin vs. Houseman, 93 U. S. 130, 137;
Turnbull vs. Payson, 95 id. 418, 423;
Barney vs. Patterson's Lessees, 6 Har. & J. 182;
Simon vs. Mann, 33 Minn. 412.

As to the relative rank and authority of the Federal and State courts, the Circuit Courts of the United States are declared to be of equal dignity with the highest court of

record in the State from which appeals may be taken to the Supreme Court of the United States; the judgments of both being final until set aside by this Court.

Cres. City L. S. &c. Co. vs. Butch. Un. &c. Co., 120 U. S. 141, 157;

Burgess vs. Seligman, 107 id. 20, 33.

Further than this, in some respects the relative rank of the Federal courts is ~~in many respects~~ superior to that of the State courts; for they are the instruments of the national government; and if there is any clashing of authority that of the Federal courts is paramount.

Claflin vs. Houseman, 93 U. S. 130, 136.

In the great mass of cases the Federal courts are given jurisdiction concurrent with that of the State courts and the bulk of litigation in the Federal courts is of this class. In all these cases it is the clear purpose of Congress that the courts of the United States shall exercise an authority and power and enjoy a rank at least as great as those possessed by the State courts, and for some purposes even greater. Now, the relative rank and dignity of courts are in a great degree determined by the length of time during which their judgments may be enforced by action. Thus, in Wisconsin, judgments of courts of record are suable for a period of twenty years; those of courts not of record only for six years. By limiting the time for bringing actions upon the judgments of the Federal courts to ten years they are assigned an intermediate rank between the two, higher than justice courts, lower than the State courts of general jurisdiction. That their relative authority and efficiency are thus impaired there can be no question. A judgment in the Federal court is not so valuable as one in the State court. The case comes within the rule uniformly followed in cases involving the construction of State laws giving to judgments the effect of liens upon real estate, a rule which declares that such laws are not to be allowed to operate to the dis-

advantage of the Federal courts relatively to the State courts, or to the disadvantage of suitors in the Federal courts. The rule is laid down in the following language:

"In those states where the judgment or the execution of the State court creates a lien only within the county in which the judgment was entered, it has not been doubted that a similar proceeding in the Circuit Court of the United States would create a lien to the extent of its jurisdiction. This has been the practical construction of the power of the United States whether the lien was held to be created by the issuing of process or by express statute. Any other construction would materially affect and in some degree subvert the judicial power of the Union. It would place suitors in the State courts in a much better condition than in the Federal courts."

Massingill vs. Downs, 7 How. 760, 766; and see
Phelps vs. O'Brien County, 2 Dillion, 518.

In the present case the reasons for applying this doctrine are much stronger than in the one from which the foregoing quotation is taken. There it was held that the State law, valid for some purposes, could not be given such an effect as to impair the efficiency of the Federal courts. It must follow from that that a law which has no other purpose and would have no other effect than to impair the efficiency of the Federal courts is without any validity at all.

IV.

The law is void for the further special reason that it is an attempt to deprive citizens of other States of rights secured to them by the Constitution of the United States.

The citizens of every state are entitled to all privileges and immunities of citizens in the State of Wisconsin. They have a right to demand of every branch of the State government the same privileges and immunities which citizens of Wisconsin can demand of it. They have the same rights in the State courts as citizens of the State have. That is to

say, no discrimination can be made against them in the State courts, or anywhere else in the State, on account of their citizenship.

"It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it prohibits discriminating legislation against them by other States. It has been justly said that no provision in the constitution has tended so strongly to constitute the citizens of the United States one people as this.

The privileges and immunities secured to citizens of each State in the several States by the provision in question, are those privileges and immunities which are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens."

Paul vs. Virginia, 8 Wall. 168, 180.

"The constitutional provision alluded to did not create those rights which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens. Its sole purpose was to declare to the several States that, whatever those rights as you grant or establish them to your own citizens, or as you limit, or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction."

Slaughter House Cases, 16 Wall. 36, 77.

Illustrations of the rule sufficient for our present purpose may be found in those cases which declare that State laws, taxing in a particular way the products of other States, or putting burdens upon their sale, or discriminating in any

way against the commercial privileges of citizens of other States, are repugnant to this clause of the constitution, as well as to the one which gives Congress power to regulate commerce between the States.

Ward vs. Maryland, 12 Wall. 418, 430;
Howe Machine Co. vs. Gage, 100 U. S. 676, 679;
See also dissenting opinion in W., St. L. & P. R'y Co. vs. Illinois, 118 id. 557, 589.

It is possible that a State limitation law might be directly obnoxious to the requirements of this constitutional provision.

Chemung Nat. Bank, vs. Lowery, 93, U. S. 72.

A law which should enact that citizens of other states, suing in its courts, must sue within half the time allowed to its own citizens, would be void. A law enacting that citizens of other states must bring actions upon judgments which they have recovered within the State within half the time allowed to its own citizens to bring such actions, would also be clearly void. Such discriminations would be too glaringly opposed to the constitution as it has been interpreted by this court.

But there are other and more indirect ways by which citizens of other States may be deprived of their constitutional rights. That jealousy or prejudice which the legislature is forbidden to yield to, may exert its influence upon the courts created by the State, to such an extent that they may not be safe tribunals for the protection of the rights secured by this provision of the Constitution. To guard against this danger, the judicial power of the United States was extended to controversies between citizens of different states, and jurisdiction in such cases conferred by Congress on the Circuit Courts concurrent with that exercised by the State courts. The sole object of that provision and one of the principal objects in view in the creation of the Circuit Courts, was that there might be in each State tribunals independent of and therefore unaffected by local and popular

prejudices, where citizens of other states might be sure to obtain the same rights which they ought to be able to assert as effectively in the State courts.

Story on the Constitution (Cooley's edition), Secs. 1690, 1692.

Green vs. Lessee of Neal, 6 Pet. 291, 297;

Burgess vs. Seligman, 107 U. S. 20, 34;

Gaines vs. Fuentes, 92 id. 10, 18, 19.

The object of the Federal courts being then to secure to citizens of other states, not different, but the same rights which the State Courts ought to grant them, a State law which make it impossible for the former to grant all the rights which can be conferred by the latter, is not only a blow at the authority of the Federal courts, but is an invasion of the rights of citizens of other States intended to be secured to them by the Constitution and laws of the United States. One of the rights secured to them in the State courts is to obtain judgments of equal value and enforceable for the same length of time as the judgments *obtained there* by citizens of the State. But if they have that right in the State courts, then they have the right to obtain judgments of the same value and enforceable for the same length of time in the Federal courts The effect of the Wisconsin limitation law, therefore, is to prevent their obtaining in the Federal courts rights which they are entitled to demand in the State courts, and, that being so, the law is void as depriving citizens of other States of rights which they enjoy under the Constitution.

It is no answer to say that the law says nothing about citizens of other States and that it is therefore not in violation of the rights of citizens of other States. For the effect of the law is as has been said. And the purpose of a law is ascertained by its effect.

Morgan's R. R. & S. S. Co. vs. Louisiana, 118 U. S. 455, 462;

Henderson vs. Mayor of N. Y., 92 id. 259, 268;

Chy Lung vs. Freeman, ib. 275, 279.

C.

Opposing arguments considered.

But it is urged that the Wisconsin statute does not assume to govern actions in any but the State courts; that each State has the power to lay down rules for the government of its own agents; and, therefore, that the State has power to prescribe the time within which every action for whatever cause, shall be brought in its own courts. Then it is further urged that the law, furnishing, as is claimed, a valid rule for the government of the State courts, becomes a rule for the government of the Federal courts by virtue of certain provisions of the laws of the United States. We are also referred to certain decisions of this court which are said to establish the validity of the Wisconsin statute.

We do not think it will be difficult to show that these positions cannot be maintained.

I.

It is no doubt true that in matters in which the State is supreme and independent of any other authority it has power to lay down the rules which shall govern its courts. But in its relations to the United States, and in matters affecting the prerogatives and interests of the United States, the State is not supreme nor independent, but subordinate. Being itself subordinate to this authority its power to prescribe rules for the government of its courts or other instruments is subject to important restrictions. Otherwise, under pretense of legislating for the government of its agents, it might successfully control the operations of the general government.

If it were true that the State, by virtue of its inherent authority over the instruments and agents which it creates, and by virtue of its reserved powers, had power to prescribe the time within which all actions, of whatever sort, should

be brought, in its own tribunals, then its statutes of limitations could be made to run against the United States; a doctrine which has always been emphatically denied by this Court.

Gibson vs. Chouteau, 13 Wall. 92;
U. S. vs. Thompson, 98 U. S. 486;
U. S. vs. N., C. & St. L. R'y Co., 118 id. 120.

It would follow, too, from such a doctrine, that the State courts would not be bound by limitation laws coming from any other authority than the State. But it seems that in all cases over which the courts of the United States have concurrent jurisdiction Congress may prescribe the period for bringing actions in the State as well as in the Federal courts.

Mitchell vs. Clark, 110 U. S. 633.

Indeed in respect to all matters coming within this concurrent jurisdiction the power of the states is so completely subordinate to that of the United States that it has been held that the jurisdiction conferred upon the State courts in such matters by State laws may be wholly taken away from them by Congress, and made exclusive in the Courts of the United States.

The Moses Taylor vs. Hammons, 4 Wall. 411, 419.

The doctrine contended for is equally contradicted by the decisions of this Court upholding acts of Congress which authorize the removal of actions begun in the State courts to the Federal courts even where the State laws have attempted to prevent such removal;

C. & N. W. R'y Co. vs. Whitton, 13 Wall. 270.

Even in cases where the State itself is the plaintiff;

N. O., M. & T. R. R. Co. vs. Mississippi, 102 U. S. 135.

And even in criminal prosecutions for offenses against the State;

Tennessee vs. Davis, 100 U. S. 257;
Strauder vs. West Virginia, ib. 303.

In view of these decisions it is foolish to contend that the power of the State to prescribe rules for the government of its own courts can be exercised without limitation or restriction in cases where rights of the United States or rights conferred by the United States are at stake.

We deny then that the States have power by virtue of any reserved or sovereign authority of their own, to prescribe the period for bringing actions upon judgments rendered by the Federal tribunals. If they claim such power they must show some other authority for it; and the only source from which such authority can be derived must be a clear and unmistakable grant in the Constitution of the United States or the laws enacted by Congress. But if such authority has been conferred upon the States, we may be very sure that it has not been conferred without such restrictions and limitations as to make it impossible that it should be exercised to the prejudice or injury of the Federal courts, or of private persons who have resorted to those courts for the enforcement of their rights.

As an illustration of the care with which Congress has guarded the instruments of the National Government from the possible effects of State hostility or jealousy, we refer the Court to the protections thrown around holders of shares of stock of the National Banks. These shares are not subject to taxation by the States without the consent of Congress. That consent has been given, but subject to the express restriction "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens."

Revised Statutes, §5219;
Merc. Nat. Bank of N. Y. vs. Mayor of N. Y., 121 U. S. 138.

II.

The Act of Congress relied on by counsel for the defendant in error was section 34 of the Judiciary Act of 1789, which has been incorporated into the Revised Statutes as section 721. It reads as follows:

"The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the Courts of the United States, in cases where they apply."

It is claimed that the effect of this act upon the State law now under consideration is "the same as if there were a separate act of Congress prescribing in so many words a ten year limitation for this action."

But if we are right in urging that the State law is void even as a rule for the government of the State courts it cannot be contended that it is adopted as a rule for the government of the Federal courts by this act; unless counsel mean to take the position that this act enlarges the power of the State, and gives it the right to legislate upon matters, which, if it had never been passed, would be outside of the legitimate province of State legislation and solely within that of Congress.

It is doubtful whether Congress can enlarge the powers of the State legislatures in this way, by delegating its own authority to them. But whether this can be done, or not, it certainly has not been done by this act. If that were so, then no legislation by a State could ever be held void as a usurpation of powers conferred upon Congress by the Constitution of the United States. But there is nothing in the language of this act to indicate any such intention. It is a general rule that:

"The State is not bound by general statutory provision

whereby any of its prerogatives, rights, titles, or interests would be impaired unless by express words. Statutes in derogation of a sovereign right are to be strictly construed.

Bishop on Statutory Crimes, §103;

The Delaware Railroad Tax, 18 Wall. 206, 225.

Section 721 of the Revised Statutes comes within this rule of strict construction. It is not to be taken as waiving sovereign prerogatives or rights. It is not a delegation of powers which properly belong only to Congress. It was not intended to put the courts or other instrumentalities of the National Government in a position of inferiority to those of the States. It was not intended to confer new powers on the States, nor to add new force to State laws. Its main object was to aid in defining the jurisdiction of the Federal courts, in cases involving the rights of parties under State laws, and it is not at all certain that it is anything more than the recognition by Congress of a principle of law, which would have been recognized by the courts if it had not been put in the form of a statute. Thus it has been said:

"This section is the recognition of a principle of universal law; the principle that in every forum a contract is governed by the law with a view to which it was made."

Wayman vs. Southard, 10 Wheat. 1, 48.

And again: "So far as concerns rights of property it is the only rule that could be adopted by the Courts of the United States, and the only one that Congress has the power to establish; and the section above quoted was merely intended to confer on the Courts of the United States the jurisdiction necessary to enable them to administer the laws of the United States."

United States vs. Reid, 12 How. 361, 363.

But whatever weight is to be attached to this section, we must remember that the laws of the States are made rules of decision in the Federal courts only *in cases where they apply*.

Now, if the provisions of the Wisconsin Revised Statutes of 1858 are properly interpreted by counsel for the defendant, and if they are valid, they will be found to contain two rules governing the commencement of actions upon judgments of courts of record. These rules are in effect as follows:

The periods prescribed for the commencement of actions in courts created by this state shall be as follows:

1. *Within twenty years:* Actions upon their own judgments.

2. *Within ten years*: Actions upon judgments of courts belonging to other jurisdictions.

Conceding, for the moment, the validity of these provisions, the question arises: Which of these two rules applies in actions brought in the Federal courts upon their own judgments? The answer manifestly is: The first. For the reason of the law rather than its letter must determine what its effect ought to be, as a rule of decision in the Courts of the United States. And we may find that the reasons for a law which makes this discrimination between the judgments of the State and Federal courts when sued on in the State courts do not apply, or apply to produce a different result, when actions are brought in the Federal courts upon their own judgments. The only reasons we can think of to justify the discrimination in the State courts are such as these: that the Federal courts belong to another, but equally sovereign judisdiction; that their records and officers are beyond the control of the State; that they are abundantly able to take care of and enforce their own judgments without help from the State courts; that suitors

who have obtained judgments in the Federal courts really have no occasion ever to resort to the State courts for the protection of their rights; and that it is inconvenient to hold the State courts open for more than ten years to entertain actions upon judgments recorded in courts of another jurisdiction. But surely these reasons do not justify an application of the law which would render the Federal courts less able to take care of and enforce their own judgments than the State courts theirs, or which would put successful suitors in a worse position in the Federal courts than in the State courts.

The only question about which there should be any doubt is, whether in principle this Court ought not to go a step further than we have yet asked it to go. The principle recognized by the Judiciary Act requires the Federal courts to be guided by State laws in all cases where they apply. There is another principle, not laid down in the books, perhaps, but of universal authority and applicability, that "*it's a poor rule that doesn't work both ways.*" Under the joint operation of these two principles it is not at all certain that we should not arrive at the following result: Judgments of the Federal courts of Wisconsin, recorded in those courts and in the custody of Federal officers, may be enforced by action in those courts at any time within twenty years; but judgments of the State courts, whose records and officers are not under Federal supervision, must be sued on in ten years, if sued on in the United States courts. Reduced to its simplest form the rule would then be as follows: Actions may be brought on their own judgments in either class of courts within twenty years after their rendition; on judgments of courts of the other class only within ten years.

The position we have taken is supported by the decisions of this Court.

The first case to recognize the applicability of State limitation laws to actions in the Federal courts upon their own judgments was that of Ross vs. Duval, 13 Pet. 45. A Virginia statute prescribed a limitation of ten years for actions upon "judgments in any court of record within the Commonwealth." In reference to this statute the Court said on page 61: "Why does not this statute apply to the Federal courts? It limits actions and executions on judgments rendered in the State courts; *and the same rule must be applicable to judgments obtained in the courts of the United States.*" This decision has been cited as supporting the position of the defendant in error. But to us it seems directly opposed to that position; for the main point decided was not that actions must be brought in the same time in the Federal courts as in the State courts, *but that the judgments of the Federal courts must be sued upon in the same time as the judgments of the State courts.*

We beg leave to refer to the convincing argument of Senator Edmunds, which will be found in his opinion printed at the end of this brief, for a further discussion of the effect upon this case of the Act of Congress above referred to.

III.

The decisions which are cited by the defendant in error will be found to fall into two classes; the first recognizing the general rule that the validity of limitation laws depends upon their reasonableness under all the circumstances; the second recognizing the validity of limitations prescribed by various State laws upon actions on foreign judgments. But these decisions do not apply here.

1. It is no doubt the general rule that limitations will be held valid which allow a reasonable time for bringing

to be given to them. But they are not thereby made domestic judgments outside of the State where they were rendered or put on an equality with domestic judgments in other States in the matter of the limitation of actions upon them. For these reasons such laws have been sustained. But the relation of the Federal government and that of the State of Wisconsin is a much closer one than that existing between two States, and its courts are upon a very different footing in any State from the courts of the other States. They are domestic courts; their judgments are domestic judgments; and they derive all their powers from an authority which is supreme within every State. None of the cases referred to by the defendant support the position that limitation laws discriminating as this one does between the Federal and State courts are a valid exercise of State power.

In the case of McElmoyle vs. Cohen, 13 Pet. 312, the statute under consideration read as follows: "Actions of debt on judgments obtained in courts other than courts of this State must be brought within five years after the judgment obtained." All that was decided in that case was that judgments rendered in other States were foreign judgments and might be made the subject of special limitation laws.

It is noticeable that in the record of this case there is no hint that any one supposed that the Georgia statute made any discrimination between the Federal and the State courts of Georgia, though its language is as capable of such an interpretation as is that of the Wisconsin Revised Statutes of 1858. It seems never to have been seriously contended that the words contained or that the State could make such a discrimination until the learned attorneys for the city of Watertown became convinced that such a construction was needed to enable that city to escape from the duty of paying its debts.

But counsel quote from the case last cited the following language: "It certainly will not be contended that judgment creditors of other States shall be put upon a better footing in regard to a State's right to legislate in this particular than the judgment creditors of the State in which the judgment was obtained;" and they say: "with equal force it may be urged, 'it certainly will not be contended that judgment creditors of a court of the United States shall be placed upon a better footing in regard to a State's right to legislate in this particular than the judgment creditors of the State in which the judgment was obtained.' "

It might be enough to say in reply to this that all we claim is that the State has no right to put judgment creditors of the Federal court on a worse footing than judgment creditors of a State court. All the State has to do to put all on the same footing is to confine its attention to the latter and leave the former alone.

But it is not true that judgment creditors of the Federal and State courts are on an equal footing as regards the power of the State legislature. For certainly Congress may at any time deprive the States of any supposed power in the premises and itself prescribe for all courts the time within which actions may be brought upon Federal judgments. So that judgment creditors of the United States *are* on a better footing in regard to a State's right to legislate in this particular than judgment creditors of the State courts. Therefore the decision in McElmoyle vs. Cohen is not applicable to this case.

In Mitchell vs. Clark, 110 U. S. 633, a case already cited, his Honor Justice Field dissented from the decision of the Court on the ground that it gave undue power to Congress. But in the course of his opinion he announced a rule which is as favorable to the cause of the defendant in error as any which has ever been laid down by this Court, and which, if

incorrect, is so only because it does not go as far as this Court has gone in subordinating the authority of the State to that of Congress. We quote this rule, and for the purposes of this case are willing to allow the defendant in error the full benefit of it. It is as follows:—

"The true doctrine is: The limitation of actions in the State courts for the enforcement of rights which are not dependent upon acts of Congress or upon the Constitution is a matter purely of State regulation."

We do not believe that there is to be found anywhere in the decisions of this Court any statement of the law more favorable to the contention of the defendant than the doctrine thus announced. But even this doctrine cannot avail to sustain the validity of the Wisconsin law as interpreted by counsel for the defendant. For the rights which we seek to enforce by this action, and which are said to have been extinguished under the laws of Wisconsin, are rights which have been conferred upon the plaintiff by the Constitution and laws of the United States; and their denial, under the circumstances of this case, is a denial of the supreme and paramount authority of the United States Government and of the instruments through which it acts, and an assertion of their subjection to the authority of the State.

For these reasons we ask that the judgment of the Circuit Court be reversed, and that this cause be remanded with directions to render judgment in favor of the plaintiff in error for the amount of his claim.

Respectfully submitted,

CHARLES E. MONROE,

Attorney for Plaintiff in Error.

WASHINGTON, D. C.

E. W. METCALF, ESQ.,

DEAR SIR:

I have considered the matter of the Wisconsin Statute of limitations as applied to the judgments of the United States Courts in that State. The statute of Wisconsin of 1858 declares:

"SECTION 14. The periods prescribed in section one of this chapter for the commencement of actions other than for the recovery of real property, shall be as follows:—

"SECTION 15. Within twenty years:—

"1. An action upon a judgment or decree of any court of record of this state.

"SECTION 16. Within ten years:--

"1. An action upon a judgment or decree of any court of record of any state or territory within the United States, or of any court of the United States."

The Statutes of the United States provide (sec. 721, Rev. Stats.) that: "The laws of the several states, except where the constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply." This was the original provision of the Judicary Act of 1789.

A judgment rendered in the circuit court of the United States in the district of Wisconsin on the 8th day of May, 1866, was sued in the same circuit court of the United States more than ten years and less than twenty years after its rendition. A plea of the statute of limitations of Wisconsin was put in alleging that the suit was not commenced within ten years after the rendition of the judgment and the question was thereon raised whether the limitation of ten years in respect of judgments in the courts of the United States of that state as related to or compared with the limitation of twenty years on judgments of her own courts was valid; or if valid, whether the Wisconsin statute applies to the case in the sense of the statute of the United States (R. S. Sec. 721) before cited.

I.

Does not the Constitution of the United States "require" that no state shall make any discrimination against the judgments of the courts of the United States in that state either as to methods of execution or remedy by suit upon them?

It may be safely assumed that it is not within the constitutional competence of any state law to limit, regulate, or in any way to affect the proceedings or judgments of the courts of the United States when such judgments, etc., are brought into consideration in a court of the United States. The only effect, therefor, that a statute of Wisconsin can have in respect of a suit in a United States court in that state, on a judgment of its own, must be such as may have been given to it by a law of the United States making the state law the rule of decision in such a case.

II.

The second and final question then is, has the statute of the United States in these words: "The laws of the several states, except where the constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply"—conferred on the state the right to make laws that in any respect whatever apply different and more onerous rules or limitations in respect of the judgments of the courts of the United States in that state, than those rules and limitations that by the statutes of Wisconsin are applied to the judgments of her own state courts.

The mere statement of the question should be its sufficient answer. In such a case even the plainest and most positive language of a United States statute upon the subject should be construed—per force if need be—to preclude such a construction; for such a construction would be an abdication of sovereignty and a substitution of servitude for it. But the act of 1789 (R. S. Sec. 721) before cited, needs no forced construction or limitation to avoid the adversely discriminating statute of Wisconsin. It provides with consummate wisdom and skill, not an inflexible rule of obedience to state statutes, but a *guide* for the United States courts founded—consistently with the supreme law and power of the United States—upon the grounds upon which the jurisprudence and statutes of particular states may be in respect of their own institutions and courts and so that if in one state the judgments of its own courts were to have certain effects and be pursued in certain ways and within certain limitations of time, the United States courts should apply the same rules to their own proceedings and judgments—nothing more. The rule was and must have been intended to be that whatever was the state law applied to the conduct and course of

the judgments of its own courts should be the guide, within constitutional limits, for the action of the courts of the United States—nothing more—in proceedings in respect of judgments of the courts of the United States in that state. The very structure of the constitution and of the national government requires that the judgments of its courts in a state shall stand on as good a footing in its own courts—to say nothing of the state courts—as state court judgments do in the courts of that state.

The statute of Wisconsin, therefore, which requires suits to be brought on the judgments of the United States courts within ten years, while suits on the judgments of the state courts may be brought within twenty years, is not within the act of congress (Sec. 721 R. S.); for the constitution of the United States *requires* that the judgments of its own courts, when sought to be enforced in its own courts, shall not be subject to a defense that in the same state would not be good in a state court in a suit upon a similar judgment of a court of the state.

III.

In such a case the statute of the state does not "apply." The state laws named in the act of Congress are evidently meant to be those that make the local law in respect of local autonomy and as applied to state judgments and procedures, the rule of decision and is meant to say that whatever is—subject to the constitution and laws of the United States—the law of the state in respect of its own institutions and procedures dealing with state subjects and state judgments shall be the guide of procedures and judgments in courts of the United States in that state; but not to allow discriminative and hostile state laws to operate adversely to anything that the courts of the United States may have decided or to the remedies that are to be invoked for enforcing them in United States courts.

Upon these considerations I am of opinion that the plea in the case you have submitted to me of the Wisconsin statute of limitations is not good.

Very truly yours,

GEO. F. EDMUNDS.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

Supreme Court of United States.

OCTOBER TERM, 1888.

NO. ~~357~~ 90

ELIAB W. METCALF,

Plaintiff in Error,

vs.

THE CITY OF WATERTOWN,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

GEORGE W. BIRD,

DANIEL HALL,

Attorneys for Def't in Error.

Supreme Court of United States.

ELIAB W. METCALF,

Plaintiff in Error,

vs.

THE CITY OF WATERTOWN,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

I.

The action is barred by sub-division 1, Section 16, Chapter 138, Revised Statutes of 1858 of the State of Wisconsin, which prescribes a limitation of ten years for commencing actions upon judgments or decrees of courts of the United States, and of certain other courts of record.

The judgment sued on is a judgment of the Circuit Court of the United States, and was recovered May 8, 1866. The *præcipe* for a summons in the present action was filed, and the summons issued, June 29, 1883, and copies of the summons were delivered to certain city officers July 2, 1883 (pages 2 to 5 of case). Thus, this action was not commenced until more than seventeen years after the cause of action accrued. It is barred, therefore, if the above sub-division prescribes the limitation for commencing it, and is valid. The only questions presented, then, are (1) does that sub-division prescribe such limitation, and (2) is it a valid statute.

1. Sub-division 1, Section 16, Chapter 138, Revised Statutes of Wisconsin of 1858, prescribes the limitation for commencing this action.

(a.) The limitations prescribed by Chapter 138, Revised Statutes of 1858, are continued in force by the subsequent Revision of 1878, as to all actions accruing before November 1, 1878.

The Statutes of Wisconsin affecting the question as to what is the appropriate limitation for this action are Sections 1, 14, 15, and 16 of chapter 138, Revised Statutes of 1858, which are as follows:

"Section 1. Civil actions can only be commenced within the periods prescribed in this chapter, except when in special cases a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited, can only be taken by answer.

Section 14. The periods prescribed in section one of this chapter for the commencement of actions other than for the recovery of real property, shall be as follows:

Section 15. Within twenty years:

1. An action upon a judgment or decree of any court of record of this state.

2. An action upon a sealed instrument when the cause of action accrues within this state.

Section 16. Within ten years:

1. An action upon a judgment or decree of any court of record of any state or territory within the United States, or of any court of the United States.

2. An action upon a sealed instrument when the cause of action accrued without this state."

Also sec. 1, chap. 282, Gen. Laws of 1861, which reads: "Wherever in chapter one hundred and thirty-eight of the Revised Statutes, a time is prescribed within which actions must be commenced, such time shall be computed to com-

mence at or from the time the several causes of action named in said chapter shall have accrued."

Also sections 4219, 4220, 4221 and 4984 of the Revised Statutes of 1878, which are as follows:

"Section 4219. The following actions must be commenced within the periods respectively hereinafter prescribed, after the cause of action has accrued.

Section 4220. Within twenty years:

1. An action upon a judgment or decree of any court of record of this state or of the United States, sitting within this state.

2. An action upon a sealed instrument when the cause of action accrues within this state, except those mentioned in section four thousand two hundred and twenty-two.

Section 4221. Within ten years:

1. An action upon a judgment or decree of any court of record of any other state or territory of the United States or of any court of the United States sitting without this state.

2. An action upon a sealed instrument, when the cause of action accrued without this state, except those mentioned in the next section."

We omit subdivision 3 and 4 as they have no bearing upon the question.

"Section 4984. In any case when a limitation or period of time prescribed in any act which is hereby repealed, for the acquiring of any right or the barring of any remedy, or for any other purpose, shall have begun to run, and a limitation or period of time for such purpose shall be prescribed in these revised statutes, the limitation or period prescribed by these statutes shall be held to apply only to such rights or remedies as shall accrue subsequently to the time when the same shall take effect; and the act repealed shall be held to

continue in force and operative to determine all such limitations and periods of time, which shall have previously begun to run, unless in special cases in these revised statutes, a different rule shall be prescribed."

Sections 14, 15 and 16 of chapter 138, Revised Statutes of 1858, were repealed by the revised statutes which took effect November 1, 1878 (sec 4978, R. S.), so that those sections continue in force and operative to determine the limitation for the commencement of all actions that accrued before November, 1878, while the Revised Statutes of 1878 apply only to such actions as accrued after that date.

Mead et al. v. Nelson, 52 Wis., 402.
Kaehler v. Dobberpuhl, et al., 56 Wis., 480.
Whitcomb v. Keater, 59 Wis., 609.

Section 16 of chapter 138 of the Revised Statutes of 1858 applies, therefore, to this action, as it accrued May 8, 1866.

(b.) As the ten years limited by sec. 16, ch. 138, R. S. 1858, expired while that statute was still in force, the right to bring the suit became thereby barred, and no subsequent statute could renew it.

Sprecher et al. v. Wakeley, et al., 11 Wis. 432.
Hill v Kricke, 11 Wis., 442.
Knox v Cleveland, 13 Wis., 245.
Parish et al. v. Eager, 15 Wis., 532.
Smith v. Cleveland, et al., 17 Wis., 556.
Pleasants et al. v Rohrer, 17 Wis., 577.
McKenney v. Springer, 8 Blackf., 506.
Stipp et al. v. Brown, 2 Carter, 647.
Wires & Peck v. Farr, 25 Vt., 41.
Davis v. Minor Etux, 1 How (Miss.) 183.

Many other cases are cited to this proposition in note on page 17 of *Angell on Limitations*, Sixth Edition, under the

head, "A statute extending the time of limitation will not revive causes of action already barred upon pre-existing statutes."

The action having become barred by the expiration of the ten years, while sec. 16, ch. 138, R. S. 1858, was still in force, the extension to twenty years by section 4220, R. S. of 1878, could not effect a renewal or revival of the right to sue. So this action would still be barred, even if the former section had not been continued by section 4984, R. S. 1878, as to all actions accruing before November 1, 1878.

2. Plaintiff's proposition that subdivision 1, of section 15, of chapter 138, R. S. of 1858, and not subdivision 1 of section 16, prescribed the limitation for this action, is untenable.

It necessitates construing the former subdivision, which reads: "An action upon a judgment or decree of any court of record of this state," to mean actions upon judgments or decrees not only of courts of record of "this state," but of courts of the United States, sitting within "this state"; and the latter subdivision which reads: "An action upon a judgment or decree of any court of record of any state or territory within the United States, or of any court of the United States," to mean actions upon judgments or decrees of any such state or territorial courts, or of any court of the United States sitting without "this state." This is a strained construction and is forbidden by well established rules.

(a.) Statutes of limitations are now regarded favorably, and, like other statutes, are to be construed agreeably to the ordinary rules of statutory construction.

This doctrine has been frequently announced by this court. In *McCluny v. Silliman*, 3 Pet., 270, the following language is used: "Of late years the courts in England and in this country have considered statutes of limitations more favorably than formerly. They rest upon sound policy, and tend to the peace and welfare of society. The courts do not now, unless compelled by the force of former decisions, give a strained construction to evade the effect of those statutes. By requiring those who complain of injuries to seek redress by action at law within a reasonable time, a salutary vigilence is imposed, and an end is put to litigation."

In *Lewis et al. v. Marshall et al.*, 5 Pet., 470, the court say: "Statutes of limitations have been emphatically and justly denominated statutes of repose. The best interests of society require that causes of action should not be deferred an unreasonable time."

In *Clementson v Williams*, 8 Cranch, 72, it is said: "The statute of limitations is entitled to the same respect with other statutes, and ought not to be explained away."

In *Leffingwell v. Warren*, 2 Black, 599, the court says: "Statutes of limitation are now regarded favorably in all courts of justice. They are statutes of repose. Usually they are founded in a wise and salutary policy, and promote the ends of justice."

In *United States v. Wilder*, 13 Wal., 254, it is said: "This court has not adopted the rule of decision made at one time in England (citing cases), and to some extent in this country, under which, by a constructive equity, judicial refinements came near to abolish the statute altogether. On the contrary, following the decisions of the English courts (citing them)made more immediately after the passage of the statute of James I, we have sought to give it full effect. In 1814, MARSHALL, Ch. J., delivering the judgment of this

court, declared that the statute of limitations was entitled to the same respect as other statutes, and should not be explained away. The same doctrine has been asserted in subsequent decisions."

In *Fisher v. Harnden*, Paine, C. C., Rep. 61, Mr. Justice LIVINGSTON, delivering the opinion of the court, said: "The court disclaims all right or inclination to put on statutes of limitation, which are found to be among the most beneficial to be found in our books, any other construction than their words import. It is as much a duty to give effect to laws of this description, with which courts, however, sometimes take great liberties, as to any other which the legislature may be disposed to pass. When the will of the legislature is clearly expressed, it ought to be followed, without regard to consequences; and a construction derived from a consideration of its reason and spirit should never be resorted to, but where the expressions are so ambiguous as to render such mode of interpretation unavoidable."

See also Angell on Limitations, sec. 23, page 17, 6th edition, as to the danger of having the salutary protection of the statute "frittered away by judicial refinements and subtile exceptions that never entered into the contemplation of its enlightened framers."

(b.) Such a forced construction is forbidden also by the very familiar rules of statutory construction, that words are to be interpreted according to their ordinary and usual meaning, and that the legislative intent is to control.

There are two distinct and well defined classes of courts in this country. The one is, courts of the state, and the

other is courts of the United States. This classification is convenient, comprehensive, accurate and universally recognized. Not only do these courts constitute two separate and distinct classes, but their separate and distinct existence is always and everywhere acknowledged. The phrases, "courts of the state," and "courts of the United States," have, in this connection, acquired a clear, fixed and well understood meaning. Unmistakably that meaning, everywhere received and acted upon, is, that the former embraces such courts only as have been established by the state, and the latter includes such courts only as have been established by the United States. This has been the uniformly received significance of these words, among all classes of people, ever since the foundation of the government. Two expressions, with a more firmly fixed, unvarying and universally understood meaning, could hardly be found in the English language.

As said in *Pennoyer v. Neff*, 95 .U S. 714: "Whilst the courts of the United States are not foreign tribunals in their relations to the state court, they are tribunals of a different sovereignty, exercising a distinct and independent jurisdiction."

Although both the Federal and State courts exist and exercise their powers within the same territorial limits, yet they are the courts of "separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres."

Abelman v. Booth, 21 Howard, 506.

Now when the phrases, "courts of the state," and "courts of the United States," are used in a statute, and especially as distinguished from each other, how are they to be interpreted? There can be no two opinions as to the answer. They must be interpreted according to their known, ordinary and usual significance.

Maillard et al. v. Lawrence, 16 How.. 251.

Levy's Lessee et al. v. McCartee, 6 Peters, 102.

Sturges v. Crownschield, 4 Wheat., 122.
Ogden v. Sanders, 12 Wheat., 213.
United States v. Fisher, 2, Cranch, 358.

The same rule has been often asserted and applied by the Supreme Court of Wisconsin.

Brightman v. Kirner, 22 Wis., 53.
Battis et al. v. Hamlin, 22 Wis., 637.
Blunt v. Walker et al., 11 Wis., 334.
Ogden v. Glidden et al., 9 Wis., 46.

Reading the statute in the light of the foregoing rules, it is quite apparent, the construction contended for by plaintiff in error cannot be maintained. The very language of the first subdivision, "an action upon a judgment or decree *of any court of record of this state*," excludes by its very terms, judgments of all courts of the United States. It speaks, plainly and unambiguously, of judgments and decrees of courts only of "this state." A court of the United States is not a court of "this state," in the sense in which the words are there used. The former is just as separate and distinct from the latter as the court of any other state or territory. The courts of record of "this state," Wisconsin, are the Supreme Court, and the several circuit, county and municipal courts established by the constitution and laws of that state; while the courts of the United Stater are the several courts established by the constitution and laws of the United States. And it is the former only that are included in the expression, "any court of record of this state," as it appears in said section 15.

Equally forced and strained is it to say that the expression — "any court of the United States," in section 16, means such courts of the United States only as sit without this state. "*Any court* of the United States," includes all courts of the United States, those sitting within the state equally as well as those sitting without it. And it

is a clear and palpable perversion of the language of the statute, to say that the clause "any court of the United States, does not include courts of the United States within this state.

The fallacy of the argument of plaintiff in error is best illustrated by the conclusion it forces him to. In order to apply the twenty years' limitation to this action, he contended in his brief in the court below, that the clause "any court of the United States," as found in section 16, does not embrace the Circuit Court of the United States for the District of Wisconsin, but only "courts of the United States which are not courts of any state or territory, as the Supreme Court, the Court of Claims, and the Circuit Court of the District of Columbia."

Such is the conclusion reached by plaintiff in error and to which he invites this court. And it is practically the conclusion the court must accept if it adopts his construction. It must hold that the Circuit Court of the United States for the District of Wisconsin, is not "any court of the United States." That, we submit, would be "giving a strained construction to evade the effect of those statutes," which the Supreme Court of the Unlted States, in *McCluny v. Silliman*, *supra*, said could not be done.

The second subdivisions of these sections strengthen, rather than weaken, our construction. Here the legislature is industriously careful to mark the distinction between actions accruing "without the state," and those accruing "within the state," and to express it by apt words. If, with this distinction thus before them, the legislators had intended to limit the meaning of "any court of the United States," as used in section 16, to such courts only as are "without this state," it is fair to presume they would have used those limiting words in that connection, as they did in the next subdivision where they wished such limitation to prevail. So, too, if they intended to embrace in "any court of record of this state" as used in section 15, all courts, both

state and federal, "within this state," is it not reasonable to say that they would have used the latter qualifying phrase there, as well as in the second subdivision? What necessity or even propriety in the change of expression, if no change of meaning was intended?

In these sections 15 and 16, the distinction between courts of this state and courts of other states and territories and of the United States is expressly taken. The two classes of courts were in the mind of the legislator at the time, and he used appropriate language to mark this distinction and to describe the two classes. Section 15 takes up one class, courts of this state, and disposes of them. Then section 16 takes up the other class, courts of the other states and territories, and of the United States, and disposes of them. Now, to say, that, after all this, any of the latter class are included in the description of the former, is doing violence to the language used, and actually thwarting the intent of the legislature plainly expressed.

The cases cited by plaintiff in error are therefore not authorities controlling the construction of this statute. In neither of them was a statute being construed that assumed to mark the distinction between state courts and United States courts, and with qualifying clauses as above in some of its subdivisions and not in others. There, either a statute confessedly making no such distinction was under review, or the question was whether the judgments of United States courts were to be considered foreign judgments in the state courts within the meaning of the rule that the merits of foreign judgments are inquirable into.

In *Chaflin v. Houseman*, 93 U. S., 130, the question was whether an assignee in bankruptcy, appointed under the national bankrupt act, could sue in a state court; and it was

held he could, because the act of congress did not make the jurisdiction of the United States courts exclusive in such cases, as it might have done.

In *Turnbull v. Payson*, 95 U. S., 418, and *Mewster v. Spaulding*, 6 McLean, 24, the question was whether judgments of United States courts must be authenticated as foreign judgments or as domestic. That it was not held or intended to be held that federal courts were courts of the state in the sense claimed by the plaintiff is made clear by the statement of the court on page 424, of the former case, "That the district court of the United States, *even out of the state composing the district*, is to be regarded as a domestic and not a foreign court."

In *Barney v. Patterson's Lessees*, 6 H. & J. (Md.), 182, the question was whether a judgment of the United States court was to be regarded in a state court as a foreign judgment within the meaning of the rule that foreign judgments are not conclusive upon the parties, but their merits may be inquired into; and the court held that "under the peculiar structure of our political system it should not be treated as a foreign judgment," but as a domestic judgment conclusive on the parties.

Ex-parte Shollenberger, 96 U. S., 369, went upon the ground that it was manifest from the statute itself that there was no intention to mark a distinction between federal and state courts; and as the object of the legislature there, as this court says, was to relieve the citizens of the state from the necessity of going outside of the state to seek judicial redress upon contracts with foreign insurance companies, it left the party to commence his action in either the federal or state court having jurisdiction, as he might see fit. Had, however, the statute there under review drawn the distinction, as it does here, between the federal and state courts we apprehend a different decision would have resulted

The case of *Simon et al. v. Mann et al.*, 33 Minn., 412, is clearly distinguishable from this. The question there was whether a garnishment issued by the Circuit Court of the United States for the district of Minnesota, was such a garnishment as authorized the debtor to make an assignment for the benefit of creditors, under the insolvent law of Minnesota, the first section of which is as follows:

"Whenever the property of any debtor is attached or levied upon by any officer, by virtue of any writ or process issued out of a court of record of this state in favor of any creditor, or garnishment made against any debtor, such debtor may make * * * an assignment of all his property * * * for the equal benefit of all his creditors, * * * which assignment shall be made in accordance with and be governed by the laws of the state of Minnesota, relating to assignments made by debtors, except as herein provided."

The court held: "In view of the scope and practice of this insolvent law, we think the Circuit Court of the United States in and for the district of Minnesota is a court of this state within the meaning of the act referred to." Thus it was because of the peculiar scope of that insolvent law, and the peculiar practice under it, that the court was induced to hold that the United States Court was a court of that state, but only within the meaning of that particular act. But it did not hold the United States Court to be a court of the state within the meaning of a statute, which itself declared the distinction between the two courts.

It is a settled principle, in the construction of statutes of limitation, that their language cannot be enlarged or restrained by arbitrary addition or retrenchment — that the court cannot extend their plain words so as to include cases not within their evident meaning, nor restrict those words so as to exclude cases evidently intended to be included. "To do so," as said by this court in *Leffingwell v. Warren*, *supra*, "would be to usurp the function of another and

distinct department of government. It would be legislation and not adjudication."

Angell on Limitations, Sec. 194, 476, 485, *et seq.*
Wood on Limitations, Sec. 252, p. 495.
McIver et al. v. Ragan et al., 2 Wheat., 29.
Bank of Alabama v. Dalton, 9 How., 522.
Bowman et al. v. Walthen et al., 1 How., 189.
Kendall v. United States, 107 U. S., 123.
Leffingwell v. Warren, 2 Black., 599.

To construe the statute as plaintiff in error contends it should be construed, would violate this principle. The court would thereby amend the first subdivision of section 15, so as to read, "An action upon a judgment or decree of any court of record of this state," *or of the United States sitting within this state*; thus adding a very material provision to this subdivision which the legislature did not see fit to adopt. The court would also thereby amend the first subdivision of section 16 so as to read, "An action upon a judgment or decree of any court of record of any state or territory within the United States, or of any court of the United States," *sitting without this state.* Here again a very important provision would be incorporated into the statute by the court, which the legislature did not see fit to adopt. Such a violent change of the statute cannot be made by the court. It would be usurping legislative functions, and taking unwarrantable liberties with the language of the statute.

Hanson et al v. Taylor, 23 Wis., 547.
Harrington v. Smith, 28 Wis., 43.
Lindsay et al. v. Fay, 28 Wis., 177.
Encking v. Simmons, 28 Wis., 272
Fallass adm'r. v Pierce et al., 30 Wis., 443.
Landon v. Burke et al., 33 Wis., 452.

In the revision of 1878, the above italicised clauses are added to these subdivisions, respectively. If they meant the same thing before the change, what necessity was there

for the change? The very fact that this change was made indicates that the legislature deemed it necessary in order to accomplish the objects of those subdivisions, as they now appear in the revision of 1878.

Again, this statute is so unambiguous as to afford no occasion for judicial construction. It is only when the legislative language is fairly capable of two or more interpretations that construcction has any office to perform.

In *Poor v. Considine*, 6 Wall., 458, the court say, respecting a clause they were asked to construe: "The language of this clause is plain and unambiguous. There is nothing in the context, rightly considered, which qualifies or affects it. There is, we think, no room for construction. * *

Were we to adopt the construction claimed by the plaintiff's counsel, instead of adjudicating, we should legislate. This, we have no power to do. Our function is to execute the law, not to make it."

In *United States v. Graham*, 110 U. S., 219, it is said:—"But with language clear and precise and with its meaning evident, there is no room for construction and, consequently, no need of anything to give it aid. The cases to this effect are numerous!"

In *Thornley v. United States*, 113 U. S., 310, the Court say:—"Where the meaning of a statute is plain, it is the duty of the court to enforce it, according to its obvious terms. In such a case there is no necessity for construction."

Edwards v. Darby, 12 Wheat., 206.
United States v. Temple, 105 U. S., 97.
Swift Company v. United States, 105 U. S., 695.
Ruggles v. Illinois, 108 U. S., 526.

The Supreme Court of Wisconsin holds the same doctrine.

In *Mundt v. Sheboygan & Fond du Lac R. R. Co.*, 31 Wis., 451, the court say, on page 457:

"Courts cannot correct supposed errors, omissions or defects in legislation. The office of interpretation is to bring out the sense where the words used are in some manner doubtful, and where these are plain and unambiguous, the court cannot depart from the language of the statute. This court has too often of late had occassion to repeat and enforce these rules, to permit them now to be called in question or disregarded. It is only where the intentionof the legislature is ambiguously expressed, so as to be fairly capable of two or more meanings, that interpretation or any latitude of construction is allowable. It is only in such cases that the courts are at liberty to accept or act upon what is termed the doctrine of equitable construction."

In *Pierce v. Atwood*, 18 Mass., 344, the court says:

"Courts may give a sensible and reasonable interpretation to legislative expressions which are obscure, but they have no right to distort those which are clear and intelligible."

The legislative expressions in the statute under inquiry are clear and unambiguous and incapable of more than one meaning. "Any court of record of this state," cannot mean any court of the United States sitting within this state. There is, therefore, no occasion for judicial construction in applying this statute. But, even if there was, the familiar rules before referred to, establish the construction we contend for.

In chapter 138, the legislature classified all judgments into three classes as follows:

1. Judgments of courts of record of this state.

2. Judgments of courts of record of the other states and territories within the United States, and of courts of the United States.

3. Judgments of courts not of record.

To actions on judgments of the first class was assigned a limitation of twenty years by Section 15; while to actions

on judgments of the second class was assigned a limitation of ten years by Section 16, and to those of the third class, a limitation of six years by Section 17.

Subdivision 1. of Section 15, prescribes the limitation for judgments of all courts of record of this state. It disposes completely of the judgments of all such courts, and leaves undisposed of only the judgments of courts of record of other states and territories within the United States, and of the United States. Section 16 then takes up and disposes of the matter which Section 15 left undisposed of. No exception, such as "other than courts sitting within this state," was expressed, because none was intended, and because, also, if it had been, no limitation would have been provided for the judgments of United States courts sitting within this state.

A review of the Wisconsin legislation on this subject confirms this constructions. From 1839, down to the revision of 1858, no discrimination was made between state and federal courts. The limitation for actions on judgments of all courts of record, whether of the United States or any state or territory of the United States, was the same, twenty years; and it was expressed in apt and appropriate language in section 41, chapter 127, R. S. 1849, as follows:

Section 41. Every judgment and decree in any court of record of the United States, or any state or territory of the United States, shall be presumed to be paid and satisfied at the expiration of twenty years after the judgment or decree was rendered."

There can be no two opinions respecting this section. The legislature had its attention directed to judgments of courts both of the United States and of the state, and it purposely prescribed a like limitation for them all. It used plain and

appropriate language as to which there could be no mistake. This legislation remained for nearly twenty years. Then came the radical change in the revision of 1858. Why this remarkable change of language, if no change of meaning was intended? It can be explained only on the theory that a discrimination was to be made between judgments rendered by courts of record of this state, and those rendered by courts of other states and territories and of the United States. And here again the legislature used apt and appropriate language to express that intent. A limitation of twenty years was prescribed for judgments of courts of record of that state, while a limitation of only ten years was enacted for judgments of like courts of other states and territories and of the United States. Thus stood the statute for another twenty years. Then came the modification contained in sections 4220 and 4221, revised statutes of 1878, whereby the twenty years' limitation was extended to judgments of courts of record "of the United States sitting within this state," and the ten years' limitation was confined to judgments of courts of record of any other state or territory "or of the United States sitting without this state."

Thus from 1839 to 1858, a limitation of twenty years was prescribed for the judgments of all courts of record, whether of that state or of any other state or territory, or of the United States. Then, in 1858, the twenty years' limitation was confined solely to judgments of courts of record of that state, and a ten years' limitation was enacted for the judgments of the courts of record of the other states and territories and of the United States Then, after twenty years, by the revision of 1878, there was a partial return to the law as it was before 1858. The twenty years' limitation was extended to the judgments of courts of record of the United States sitting within that state, and the ten years' limitation restricted as above. And the revisors giving their reason for this change, say: "Judgments of United States

courts in this state, *are put on the same footing*, as domestic judgments, as manifestly proper." Revisor's note, p. 289 §4220.

3. In the revision of 1858, actions upon judgments of courts of records are classified as respects the courts by which the judgments are rendered. Actions upon judgments of all such courts of Wisconsin are placed in one class, and those upon judgments of like courts of the other states and territories, and of the United States, are placed in another. That is, the basis of classification here is the courts rendering the judgments, not the locality or territory within which they are rendered. But actions upon sealed instruments are classified as respects the territory within which the cause of action accrued. All such actions accruing within that state comprise one class, while all such as accrue without that state comprise another. And the fact that there is this marked difference in the basis of classification, expressed in unmistakable language within the limits of a few lines of this statute, gives emphasis to the construction we contend should be adopted. In the revision of 1878, the territory within which the cause of action accrued is made the basis of the classification of actions upon judgments as well as of actions upon sealed instruments. All actions upon judgments rendered within this state, whether by a state or United States court, are assigned to one class, while those rendered without the state are assigned to another.

It is clear, therefore, that the controlling consideration actuating the legislature in adopting sections 15 and 16, so far as actions upon judgments are concerned, was not the locality where the cause of action might arise, but the court by which the judgment was rendered, and if anything can be made plain by appropriate language, that used in these two sections makes this proposition exceedingly plain.

So that a consideration of the legislation on the subject gives additional force to the construction we contend for. It shows not merely an alteration in phraseology, or the omission or addition of words, but such a radical change, not only in the language, but the structure of the statute. as to evidence a clear intent on the part of the legislature to change the statute and its construction within the rule as to the revision of statutes referred to by plaintiff in error.

For the same reason no aid is gained by resort to the statutes of other states making no discrimination between judgments of its own courts and of the courts of other states and territories and of the United States. Here the discrimination is plainly made and intended, and it is therefore useles to consult the legislation of other states collected in the different works on limitations.

The history of sections 15 and 16, and the manner of their preparation, presentation and adoption, is conclusive of their construction, and that the interpretation adopted by the circuit court is the correct one and should prevail. To this important consideration we now invite attention

The revised statutes of 1858 are something more than a mere revision of the former statutes. The law authorizing their preparation, chapter 126, general laws 1856, of Wisconsin, required the revisors not only to "collect, compile and and digest thegenerallaws of the state" and "report such compilation to the legislature," but also to "accompany their report with such proposed amendments as they may think proper to suggest." Under this authority the revisors prepared not only a revision or compilation of the former statutes but also several amendments to those statutes as thus revised and compiled. See revisors' report, page 256, volume 1, Senate Journal, 1858, of Wisconsin. In this report they state,first, that they have made a compilation of the former statutes making such verbal changes only as would express

more clearly their meaning. Then, after thus disposing of the compilation or revision, proper, they say:

"The undersigned also herewith submit several amendments which they have prepared, *some of which change the present statutes;* ohers are intended to explain and perfect the laws already in existence, and others are intended to provide for cases not now provided for; none, however, of the amendments or *new enactments* submitted herewith, are intended to make any *radical* change in the *system of laws* contained in the revised statutes, and the subsequent enactments of our differen legislatures."

The manner of doing this work, as appears by the original files in the office of the secretary of state, was as follows: They first compiled all the existing statutes under proper titles, divided into appropriate chapters, making no changes except verbal ones to express the meaning more clearly. These chapters thus compiled were prepared so as to be adopted as reported by the revisors if the legislature desired to make no change in the meaning of the existing statutes. Then, with such of these compiled chapters as the revisors thought ought to be changed in meaning and substance, they reported new chapters covering the same subjects and embracing the changes recommended by them. These new chapters were styled amendments of, or substitutes for, the compiled chapters. So that if the legislature desired to make the changes suggested by the revisors, they could adopt the new chapters as amendments to, or substitutes for, the compiled chapters.

We are now prepared to consider just what was done respecting the limitation of actions. First, the revisors compiled all the existing statutes on that subject into one chapter known as chapter 135, of the compiled statutes. It embraced simply the provisions of the revision of 1849, on that subject, with such amendments as had since been made by the legislature, with a few verbal changes to express the meaning more accurately. With this compiled chapter, they reported, a new chapter on the same subject embracing such substantial changes as they thought ought to be made. It was entitled "Substitute for chapter 135, of com-

piled statutes — Of the Limitation of Actions;" and was indorsed, "Amendment No. 20." This amendment No. 20, was adopted by the legislature as a "substitute for chapter 135, of the Compiled Statutes," as recommended by the revisors, and now appears as chapter 138, R. S. 1858. See original files of Title 23, of the revised statutes of 1858, in the office of the secretary of state.

Now, one of the principal changes of the old statutes occasioned by this amendment or substitute, is the very discrimination between judgments of courts of record of this state, and judgments of courts of record of the other states and territories and of the United States, effected by sections 15 and 16, of chapter 138, R. S. 1858. Can there be any doubt, then, from the history of these sections, that the legislature intended to make the change effecting this discrimination and that it actually did it by the use of apt and appropriate language?

II.

Subdivision one, section 16, revised statutes 1858, of Wisconsin, is a valid statute.

1. This statute prescribes limitations for actions in the state courts only. It does not assume nor undertake to prescribe limitations for actions in the United States courts. That it could not do, alone and by itself, had it attempted. It does not, therefore, in any manner, interfere with or impede actions or proceedings in United States courts. It does not, *proprio vigore*, even apply to the latter courts. Were there not an act of congress applying this statute to those courts, we should not contend for a moment that it did apply to them. That there is such an act will presently be

seen. The question here is, is this a valid statute as prescribing limitations for actions in the state courts? That the state has lawful authority to prescribe limitations for all actions that may be brought in its courts, is too well settled to need argument or citation of authority in this court.

2. The fact that this statute prescribes a shorter period of limitation for actions upon judgments of courts of other states and territories, and of courts of the United States, than is prescribed by section 15 for judgments of courts of record of this state, does not affect its validity. That fact might be urged, possibly with great force, against the *policy* of the statute; but as against the *power* of the legislature to pass it, it can have no force whatever. And it is the *power* of the legislature, not the *policy* of its action, that is here under review.

3. Such shorter limitation has already been held valid as regards judgments of courts of other states. And the same arguments are equally potent to sustain such limitation respecting judgments of courts of the United States. The power of the state to prescribe a shorter period of limitation for judgments of courts of other states than for judgments of its own courts, is one of its reserved *sovereign* powers. It is thus stated by Mr. Angell in his work on Limitations, section 65.

"The respective states under our government may, *in virtue of their reserved sovereignty*, limit the time for remedies even upon the judgments of courts of other states, and altogether bar, by statute, suits upon such judgments, if not instituted within the time prescribed by the statute."

This Court in *McElmoyle v. Cohen*, 13 Peters, 312, speaking of the power of the states to enact such statutes, say, at page 327:

"It would be strange, if in the now well understood rights of nations to organize their judicial tribunals according to their notions of policy, it should be conceded to them

in every other respect than that of prescribing the time within which suits shall be litigated in their courts. Prescription is a thing of policy, growing out of the experience of its necessity and the time after which suits or actions shall be barred, has been from a remote antiquity, fixed by every nation, *in virtue of that sovereignty by which it exercises its legislation for all persons and property within its jurisdiction.* This being the foundation of the right to pass statutes of prescription or limitation, may not our states, under our system, exercise this right in virtue of their sovereignty? or is it to be conceded to them in every other particular, than that of barring the remedy upon judgments of other states by the lapse of time? The states use this right upon judgments rendered in their own courts; and the common law raises the presumption of the payment of a judgment after the lapse of twenty years. May they not, then, limit the time for remedies upon the judgments of other states, and alter the common law by statute, fixing a less or larger time for such presumption, and altogether barring suits upon such judgments, if they shall not be brought within the time stated in the statute? It certainly will not be contended that judgment creditors of other states shall be put upon a better footing, in regard to a state's right to legislate in this particular than the judgment creditors of the state in which the judgment was obtained. And if this right so exists, may it not be exercised by a state, restraining the remedy upon the judgment of another state, leaving those of its own courts unaffected by a statute of limitations, but subject to the common law presumption of payment after the lapse of twenty years. In other words, may not the law of a state fix different times for barring the remedy in a suit upon a judgment of another state and for those of its own tribunals. We use this mode of argument to show the unreasonableness of a contrary doctrine. But the point might have been shortly dismissed with this sage declaration, that there is no direct constitutional inhibition upon the states, nor any clause in the constitution from which it can be even plausibly inferred that the states may not legislate upon the remedy in suits upon the judgments of other states, exclusive of all interference with their merits."

Bank of Alabama v. Dalton, 9 How., 522.

Randolph v. King, 2 Bond (C. C.), 104.

In re Nassau, 2 Central, L. J., 570.

McClintock v. Rogers, 12 S. & M., 702.

The same arguments apply with equal force to the right of the states to limit the time for remedies upon judgments of courts of the United States. With equal force it may be urged, "it certainly will not be contended that judgment creditors of *a court of the United States* shall be placed upon a better footing in regard to a state's right to legislate in this particular, than the judgment creditors of the state court in which the judgment was obtained. And if this right so exists may it not be exercised by a state's restraining the remedy upon a judgment of *a court of the United States*, leaving those of its own courts unaffected by a statute limitation, but subject to the common law presumption of payment after the lapse of twenty years." If the state prescribe no limitation of action upon its own judgment, then, the common law prescription of twenty years would apply to such actions. But would its failure to pass such act, deprive it of the power to prescribe a shorter period of limitation of actions upon judgments of courts of the United States? It certainly would not.

4. It is, then, established law, that the state may prescribe limitations for actions upon judgments without regard to the court pronouncing them, whether it be a court of its own or another state. The only inquiry remaining is, does the fact that the court pronouncing the judgment is a United States court, prevent the state from exercising that power? A brief consideration of the nature of a judgment will be sufficient to show that it does not. A judgment is simply the evidence of a debt or liability between the parties to the action. It transforms into an indisputable debt or liability of record, what before was a disputable debt or liability, existing only in parol or simple contract. It changes only the evidence of the debt or liability and the manner of enforcing and securing its avails. It still remains, simply and only an evidence of debt or liability between the parties to the action. Between the parties to the action, we say, and no one else. Neither the court

pronouncing it, nor its officers, nor the state or government establishing the court, is, in any way, a party to such debt or liability. No rights, privileges or liabilities of either are granted, secured, preserved or affected thereby. The fact that the court pronouncing it is a United States court, does not, at all, change its character. It still remains simply an evidence of debt or liability between the parties — and nothing more. It may be sued over in the state courts always — in the United States courts, only when the parties are residents of different states, or otherwise, such as to give those courts jurisdiction. There is, therefore, nothing in the fact that the court which pronounces it, is a United States court, that prevents the state from limiting the action on it when brought in its own courts.

The fact that the evidence of the debt or liability is declared, signed and preserved by the United States officials, makes no difference in this respect. A patent of land issued by the United States, is likewise so signed. And yet it would not be claimed for a moment that an action by the patentee to recover the land would not be barred by ten years adverse possession under the state law.

5. This statute is obnoxious to no constitutional inhibition or limitation. Before the formation of the Union, the states, or colonies, possessed all legislative power within their respective limits. By adopting the constitution of the United States, they simply granted certain of their powers to the general government; but by a special provision reserved to themselves all "the powers not delegated to the United States by the constitution nor prohibited to it by the state." (Art. 10, Amendments.) On the other hand, the state constitution is to be regarded, not as a grant of power, but as a limitation upon powers already possessed. So that to ascertain whether a state possesses a particular power, we are first to ascertain whether the constitution of the United States contains a grant of that power to the United States, or a pro-

hibition of it to the state; and second, whether the state constitution contains any prohibition or limitation of that power. If the former contains no such grant or prohibition, and the latter is also free from any such limitation or prohibition, then the state possesses the power in question.

In *Bushnell v. Beloit*, 10 Wis, 195, the court announces this doctrine in the following language:

"We suppose it to be a well settled political principle that the constitution of the state is to be regarded not as a grant of power, but rather as a limitation upon the powers of the legislature, and that it is competent for the legislature to exercise all legislative power not forbidden by the constitution or delegated to the general government or prohibited by the constitution of the United States. The legislature subject to a qualified veto of the executive, possesses all the legislative power of the state," and it may enact any statute it is not expressly prohibited from passing either by the constitution of the state or of the United States.

In *Bank of Alabama v. Dalton*, 9 How., 522, the court speaking of a statute of one state limiting actions upon judgments of other states, say at page 527:

"In administering justice to enforce contracts and judgments, the states of this Union act independently of each other, and their courts are governed by the laws and municipal regulations of that state, where a remedy is sought, unless they are controlled by the constitution of the United States, or by laws enacted under its authority. And one question standing in advance of others is, whether the courts of Mississippi stood thus controlled, and were bound to reject the defense set up under the state laws, because, by the supreme laws of the Union it could not be allowed."

The constitution of the United States contains no grant by the state of this power to the United States and no prohibition of it to the states; and there is no limitation or prohibition contained in the state constitution. The state

legislature, therefore, has the power to enact this statute, and the statute is valid.

6. The principle is well settled that no statute will be declared in conflict with the constitution unless it clearly and unmistakably violates that instrument. The court must be able to put its finger upon the particular clause of the constitution violated before it will declare the statute unconstitutional.

Fletcher v. Peck, 6 Cranch, 87.
Dickson v. The State, 1 Wis., 122.
State ex rel. Chandler v. Main, 16 Wis., 398.
Mills v. Charleton, 29 Wis., 400.
State ex rel. Grundt v. Albert, 32 Wis., 403.

The plaintiff will look in vain for any provision of the constitution that the statute under review violates. Hence as this Court say in *Bank of Alabama v. Dalton*, 9 How., 522 (p 529,) speaking also of astatute of limitation, "as the state law is not opposed to the coustitution of the United States or to the act of congress of 1790, it is our duty to affirm the judgment," so, this statute is valid.

7. The legislative authority is clearly apparent when we consider the character of statutes of limitation and the power involved in their enactment. They relate solely to the remedy, and establish what circumstances shall be taken as evidence that a contract has been performed. Hence, the power involved is simply a power to establish a rule of evidence, and that power has never been denied to the states.

In *Angell on Limitations*, section 22, it is said:

"They rather establish that a certain lapse of time shall amount to the evidence of the transfer of property or of the performance of a contract, than to take away the one, or dispense with the other. In prescribing the

evidence which shall be received in its courts, and in giving effect to that evidence, a state is clearly within the limits designated by the consitution of the United States."

In *Sturges v. Crowninshield*, 4 Wheaton, 122, this Court, at page 207, say:

"Statutes of limitations relate to the remedies which are furnished in the courts. They rather establish, that certain circumstances shall amount to evidence that a contract has been performed, than dispense with its performance."

In *Ogden v. Sanders*, 12 Wheaton, 213, Chief Justice MARSHALL says, at page 349:

"In the case of *Sturges v. Crowninshield*, it was observed by the court that these statutes relate only to the remedies which are furnished in the courts; and their language is generally confined to the remedy. They do not purport to dispense with the performance of a contract, but proceed on the presumption that a certain length of time, unexplained by circumstances, is reasonable evidence of a performance. It is on this idea alone that it is possible to sustain the decision, that a bare acknowledgment of the debt, unaccompanied with any new promise, shall remove the bar created by the act. It would be a mischief not to be tolerated, if contracts might be set up at any distance of time, when the evidence of payment might be lost, and the estates of the dead, or even of the living, be subjected to these state obligations. The principle is, without the aid of a statute, adopted by the courts as a rule of justice. The legislature has enacted no statute of limitations as a bar to suits on sealed instruments. Yet twenty years of unexplained silence on the part of the creditor is evidence of payment. On parol contracts, or on written contracts not under seal, which are considered in a less solemn point of view than sealed instruments, the legislature has supposed that a shorter time might amount to evidence of performance, and has so enacted. All have acquiesced in these enactments, but have never considered them as being of that class of laws which impair the obligation of contracts. In prescribing the evidence which shall be received in its courts, and the effect of that evidence, the state is exercising its acknowledged powers. It is likewise in the exercise of its legitimate powers, when

it is regulating the remedy and mode of proceeding in its courts."

In *Jackson v. Lamphire*, 3 Peters, 280, the court say, at page 290:

"It is within the undoubted power of state legislatures to pass recording acts; * * * * * such, too, is the power to pass acts of limitation, and their effect. Reasons of sound policy have led to the general adoption of laws of both descriptions, and their validity cannot be questioned."

8. This Court recited these statutes and expressed no dissent from the construction and validity of the sections we contend for here. In *Koshkonong v. Burton*, 14 Otto, 668, the court, reciting and construing the statutes of limitations of this state, say at page 670:

"The revision of 1849 was superseded by one made in 1858, which went into operation on the first day of January, 1859. By the latter, as modified by an act passed in 1861, civil actions, other than for the recovery of real property were required to be commenced within the following periods: "Actions upon judgments or decrees of courts of record of the state and actions upon sealed instruments when the cause of action accrued in the state, within twenty years. (Rev. Stat. Wis., 1858, C. 138, sec. 15): Actions upon the judgments or decrees of courts of record of any state or territory *of the United States or of the Courts of the United States*, and actions upon sealed instruments, when the cause of action accrued out of this state, within ten years (sec. 16); and actions upon contracts, obligations or liabilities, express or implied, excepting those mentioned in sections 15 and 16 within six years, the time to be computed, in each case, from the date when the cause of action accrued. * * * * Thus stood the law of the state until the 9th day of March, 1872, etc."

Thus this court has practically construed these sections and held them valid. If they were to be construed as claimed by the plaintiff in error, or to be held invalid in any respect, this court would hardly have used the above language.

The cases cited by the learned counsel for the plaintiff in error are not in conflict with the views here expressed.

United States v. Thompson, 98 U. S., 486, went upon the very familiar theory that exemptions are a prerogative of the sovereign which can be surrendered only by the act of the sovereign and one soverign cannot surrender it for another. *Farmers & Mechanics National Bank v. Dearing*, 91 U. S., 29. *McCullough v. Maryland*, 4 Wheaton, 316. *Bank of Commerce v. Commissioners of New York City and County*, 2, Black, 620, went, the two former upon the ground that the bank was an instrumentality of the government, used by it to carry on the affairs of the government and the state could not tax it or apply its usury laws to its contract; and the latter case on the ground that the stocks and bonds of the government were like instrumentalities and could not be taxed by the state.

The *Chicago & Northwestern Railway Co. v. Whitton*, 13 *Wallace*, 279, *Home Insurance Company v. Morse*, 20 Wallace, 445, and *Ableman v. Booth*, 21 Howard, 506, were all cases where it was sought by state laws to circumscribe the jurisdiction of Federal Courts as established by the Constitution and acts of Congress, or, as in *Ableman v. Booth*, where the state court assumed to revise and annul the judgments and proceedings of the Federal Courts.

III.

The Supreme Court of Wisconsin has construed the statutes under inquiry, and held that subdivision 1, of sec. 16, chapter 138, R. S. of 1858, prescribes the limitation for commencing actions upon judgments of courts of the United States recovered before the adoption of the Revised Statutes of 1878, and that it is valid

Waterman, adm'r, etc., v. Town of Waterloo, 69 Wis., 260.

It is intimated in plaintiff's brief that that case was carried through the courts with undue expedition. But the volume in which it is reported shows that many of the cases therein consumed no more time, and some less than this one. The fact is, that the Wisconsin practice is such that cases usually reach decision in the Supreme Court within a year or year and a half after their commencement.

The construction given to the statutes of a state by the highest judicial tribunal of that state will be adopted and followed by this court. Speaking of the construction given to the Wisconsin statute of limitations by the Supreme Court of Wisconsin, this court lay down the rule as follows in *Leffingwell v. Warren*, 2 Black, 599:

"The construction given to a statute of a state by the highest judicial tribunal of such state is regarded as a part of the statute and is as binding upon the courts of the United States as the text."

And in support of this the many previous cases of this court are there cited.

The Waterman case was commenced and determined while the present action was pending. We do not claim for it, therefore, that conclusive effect here that an earlier determination of it might have had under the decisions of this court. But we do claim that in the language of this court, "even in such cases, for the sake of harmony and to avoid confusion, the Federal Courts will lean towards an agreement of views with the State Courts if the question seems to them balanced with doubt."

Burgess v. Seligman, et al., 17 Otto, 20.

We claim for that case also the respectful consideration due to the decision of the highest court of a state, respecting the validity or meaning of the constitution of that state or its statutes, which, as repeatedly said by this court, is

"always entitled to the highest respect of the Federal Courts."

Bucher v. Cheshire R. R. Co. et al., 125 U. S., 555.

In *Waterman, adm'r, etc., v. The Town of Waterloo, supra,* the question under inquiry was raised in precisely the same manner that is here.

The first cause of action there was upon a judgment of the circuit court of the United States, for the district of Wisconsin, rendered September 13, 1866. The action was commenced August 26, 1886, and to this cause of action, the defendant pleaded the ten years limitation prescribed by subdivision 1, of section 16, chapter 138 R. S. of 1858, and the court held it applied to and barred the action. After stating the above facts and that the only question was whether said ten years statute applied to and ruled the case, the court say.

"This is a new question in this court, but we do not think that there is the least possible doubt about the construction of this statute; indeed, the language is too plain and explicit to admit of construction. It has but one meaning. 'Section 16, c. 138, Rev. St. 1858. Within ten years. (1.) An action upon a judgment or decree of any court of record of any state or territory, within the United States, or of any court of the United States.' This cause of action is a judgment of a court of the United States and, therefore, within the very language of this statute and barred by it. Previous to this statute, the judgments of all courts of record were barred in twenty years. In 1858 the legislature saw fit to bar all judgments or decrees of state courts other than those of this state, and all territorial courts, and of any court of the United States, in ten years, and leave the twenty years limitation upon a judgment or decree of any court of record of this state as in section 15. In the revision of 1878, in section 4220, the judgments or decrees of United States courts, sitting within this state, were placed, with judgments and decrees of the courts of record of this state, under a bar of twenty years, and the revisors say in their note to said section: 'Judgments of United States courts in this state are put on the same footing as domestic judgments, as manifestly proper.' Who put them on the same footing and when were they put on the same footing as domestic judgments? Why

the revisors, and by the revision, as a matter of course. Most certainly the history of this legislation, and the changes manifestly made, do not cast any doubt upon the plain and obvious meaning of this language. Any argument of construction based upon this language might imply a doubt where none can exist. Similar language in the state insolvent law of Minnesota, in *Simon v. Mann*, 33 Minn., 413, 23 N. W. Rep., 856, was held to include the circuit court of the United States for the District of Minnesota, but only 'in view of the scope and practice of the insolvent law.' That the circuit courts of the United States are properly called domestic courts of the states wherein they are held, could not possibly change the meaning of this language, "or of any Court of the United States," without destroying it entirely. What other United States Courts, except the district and circuit courts of the United States render judgments upon which the statute of limitations can run? The revisors seemed to think that they had put the judgments of these courts upon the footing of domestic judgments by an amendment in the revision; not to make them domestic, but "to put them on the same footing" under the limitation law. The authorities cited by the learned counsel of the appellant have no possible application or effect to cast a doubt on the plain language of the statute. It has been very properly changed in the revision of 1878, but we must administer the law applicable to this case as we find it."

The manuscript case of *Cole v. Weil* decided by Judge Miller in the District Court of the United States for the District of Wisconsin in 1870, is not entitled to any weight here. The decision of that case was reviewed and held unsound by Judges Gresham and Bunn in the present case, and was not followed by the Supreme Court of Wisconsin in the *Waterman* case, though urged on its attention.

IV.

The statute being valid as applicable to the state courts, the judiciary act applies to and makes it valid in the United States courts also.

Angell on Limitation, Sec. 24.

The judiciary act of 1789, Sec. 34, R. S., Sec. 721, provides, "that the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law, in courts of the United States in cases where they apply."

In *McCluny v. Silliman*, 3 Peters, 270, the Supreme Court of the United States say at page 277:

"Under this statute, the acts of limitations of the several states, where no special provision has been make by Congress, form a rule of decision in the courts of the United States, and the same effect is given to them as is given in the state courts."

In *Bank of Alabama v. Dalton*, 9 How., 521, the court say:

"That acts of limitation furnish rules of dicision, and are equally binding on the federal courts as they are on state courts, is not open to controversy; the question presented is one of legislative power, and not practice."

In *Leffingwell v. Warren*, 2 Black, 599, the court say:

"The courts of the United States, in the absence of legislation upon the subject by congress, recognize the statute of limitations of the several states, and give them the same construction and effect which are given by the local tribunals. They are a rule of decision under the 34th section of the judiciary act of September 24, 1789, ch. 20.

The construction given to a statute of a state by the highest judicial tribunal of such state, is regarded as part of the statute, and is as binding upon the courts of the United States as the text."

In *Ross et al. v. Duval et al.*, 13 Peters, 45, the court say at page 60:

"If this, then, be a limitation law, it is a rule of property; and under the 34th section of the Judiciary Act, it is a rule of decision for the courts of the United States."

In *Wayman et al. v. Southardt et al.*, 10 Wheaton, 1, the court say on page 48:

"This section is unquestionable prospective, as well as retrospective. It regards future as well as existing laws."

In *United States v. Mundell*, 6 Call., 245, it is said:

"Under section 34 of the Judiciary Act, the existing statutes of a state, when applicable, must be considered in the same manner as if the words of the state law had been adopted and specially re-enacted by act of congress."

In *Tioga R. R. Co. v. B. & C. R R. Co.*, 20 Wallace, 137, the court say:

"In Angell on Limitation of Actions of Law, at p. 14, sec. 24, the author says: 'Under the 34th section of the Judiciary Act of 1789, 1 Stat. at L., 73, the Acts of Limitations of the several states, where no special provision has been made by congress, form a rule of decision in the courts of the United States, and the same effect is given to them as is given in the state courts. In accordance besides to a steady course of decision for many years, the federal judiciary feel it an incumbent duty carefully to examine and ascertain if there be a settled construction by the state courts of the statutes of the respective states where they are exclusively in force, and to abide by and follow such construction when found to be settled. There is no unwritten or common law of the union. The rule of action is found in the different states as it may have been adopted and modified by legislation and a course of judicial decision. The rule of decision must be found in the local law, written or unwritten."

It has already been observed this statute does not undertake to limit actions on judgments when brought in courts of the United States. It assumes to limit them only when brought in the state courts. Then the act of congress provides, in effect, that the limitations thus prescribed by the state for actions in the state courts, shall be the limitations for the same actions when brought in the courts of the United States. Thus the limitation of the action in the latter courts, is prescribed by the act of congress, and not by the state law; the act of congress providing only that the periods of limitation prescribed by the state for the actions

in its courts shall be the periods of limitation in the United States courts. The limitation prescribed by the state law prevails in the United States courts, not because of the state by any means, but because of the act of congress providing it shall prevail there. So that applying here the principles announced in the foregoing cases, and the case stands the same as if there were a separate act of congress prescribing, in so many words, a ten years limitation for this action.

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